

Tuesday
April 23, 1985

Federal Register

Selected Subjects

- Administrative Practice and Procedure**
 - Interstate Commerce Commission
 - Treasury Department
- Air Pollution Control**
 - Environmental Protection Agency
- Animal Drugs**
 - Food and Drug Administration
- Aviation Safety**
 - Federal Aviation Administration
- Commodity Futures**
 - Commodity Futures Trading Commission
- Customs Duties and Inspection**
 - Customs Service
- Excise Taxes**
 - Alcohol, Tobacco and Firearms Bureau
- Exports**
 - International Trade Administration
- Food Grades and Standards**
 - Agricultural Marketing Service
- Government Procurement**
 - General Services Administration
- Hazardous Waste**
 - Environmental Protection Agency
- Income Taxes**
 - Internal Revenue Service

CONTINUED INSIDE



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Selected Subjects

Pipeline Safety

Research and Special Programs Administration

Securities

Securities and Exchange Commission

Surface Mining

Surface Mining Reclamation and Enforcement Office

Contents

Federal Register

Vol. 50, No. 78

Tuesday, April 23, 1985

The President

PROCLAMATIONS

- 15857 Jewish Heritage Week (Proc. 5321)
 15859 Victims of Crime Week (Proc. 5322)

Executive Agencies

ACTION

NOTICES

- 15944 VISTA program guidelines; proposed

Agricultural Marketing Service

RULES

- 15861 Honey, extracted; grade standards

Agriculture Department

See Agricultural Marketing Service; Food Safety and Inspection Service; Forest Service.

Air Force Department

NOTICES

Meetings:

- 15954 Scientific Advisory Board

Alcohol, Drug Abuse, and Mental Health Administration

NOTICES

Meetings; advisory committees:

- 15980 May

Alcohol, Tobacco and Firearms Bureau

RULES

- 15886 Alcohol, tobacco and other excise taxes: Products manufactured in Puerto Rico and the Virgin Islands; definition

Antitrust Division

NOTICES

National cooperative research notification:

- 15989 Microelectronics & Computer Technology Corp.

Army Department

NOTICES

Meetings:

- 15955 Military Personal Property Symposium
 15955 Science Board
 15955 Science Board; change
 Military traffic management:
 15955 Rate filing procedures; domestic interstate personal property shipments

Coast Guard

RULES

Dangerous cargoes:

- 15895 Self-propelled foreign flag vessels carrying hazardous liquids and bulk liquefied gases; compliance procedures; correction

Commerce Department

See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Futures Trading Commission

RULES

Registration, etc.:

- 15868 Commodity pool operators; exclusion for otherwise regulated persons, etc.

NOTICES

Contract market proposals:

- 15952 Chicago Mercantile Exchange; feeder cattle
 15953 MidAmerica Commodity Exchange; copper

Comptroller of Currency

NOTICES

- 16037 Privacy Act; systems of records

Customs Service

RULES

- 15884 Container stations; relocation or alteration procedures

Defense Department

See also Air Force Department; Army Department; Navy Department.

NOTICES

Meetings:

- 15954 Education Benefits Board of Actuaries
 Procurement:
 15954 Commercial or industrial activities, performance; inventory report and review schedule (OMB A-76 implementation)

Delaware River Basin Commission

NOTICES

- 15957 Hearings

Economic Regulatory Administration

NOTICES

Natural gas exportation and importation petitions:

- 15958 Bethlehem Steel Corp.
 15960 N-REN Corp.

Employment and Training Administration

NOTICES

Adjustment assistance:

- 15992 Airway Industries, Inc., et al.
 15990 Auburn Die Co. et al.

Unemployment compensation program; extended benefit periods:

- 15991 Idaho
 15991 West Virginia

Employment Policy, National Commission

NOTICES

- 15993 Meetings

Energy Department

See Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Environmental Protection Agency**RULES**

Air pollution; standards of performance for new stationary sources:

- 15893 Nitrogen oxide emissions; reference methods
Air quality implementation plans; approval and promulgation; various States:

15892 Tennessee

Hazardous waste:

- 16044 Treatment, storage, and disposal facilities; surface impoundments, land treatment units, and landfills

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

- 15943 Ohio; extension of time

Toxic substances:

- 15943 Hexachloronorborene; significant new uses; correction

Farm Credit Administration**RULES**

- 15865 Conflict of interest; personnel administration; correction

Federal Aviation Administration**RULES**

Airworthiness directives:

- 15865 Bell
15866 Partenavia Costruzioni Aeronautiche S.p.A.

PROPOSED RULES

- 15903 Restricted areas and control areas
15902 Transition areas

NOTICES

- 16036 National airspace review enhancement plan; suspended

Federal Communications Commission**NOTICES**

- 16040 Meetings; Sunshine Act

Federal Energy Regulatory Commission**NOTICES**

Hearings, etc.:

- 15961 Algonquin Gas Transmission Co.
15961 Eastern Shore Natural Gas Co.
15962 Niagara Mohawk Power Corp. et al.
15964 Northern Natural Gas Co.
15964 Northwest Pipeline Corp.
15965 Utilities Holding Co. et al.
15965 Oil pipeline construction costs (1984)

Federal Maritime Commission**NOTICES**

Investigations, hearings, petitions, etc.:

- 15978 Trans-Pacific Freight Conference (Hong Kong) et al.

Federal Reserve System**NOTICES**

- 15978 Agency information collection activities under OMB review
Bank holding company applications, etc.:
15979 Chase Manhattan Corp.

- 15979 Citizens Financial Services, Inc., et al.

Food and Drug Administration**RULES**

Animal drugs, feeds, and related products:

- 15885 Amprolium, ethopabate, and virginiamycin

NOTICES

Meetings:

- 15980 Consumer information exchange

Food Safety and Inspection Service**NOTICES**

Meat and poultry inspection:

- 15947 Standards and Labeling Division policy memoranda

Foreign-Trade Zones Board**NOTICES**

Applications, etc.:

- 15948 New Hampshire

Forest Service**NOTICES**

Meetings:

- 15948 Colville National Forest Grazing Advisory Board
15948 Mono Basin National Forest Scenic Area Advisory Board

General Services Administration**PROPOSED RULES**

Acquisition regulations (GSAR):

- 15943 Identification of provisions and clauses

Health and Human Services Department

See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health.

Health Resources and Services Administration**NOTICES**

Grants; availability, etc.:

- 15981 Indian health service; health professions recruitment program
Meetings; advisory committees:
15981 May

Hearings and Appeals Office, Energy Department**NOTICES**

Applications for exception:

- 15965 Cases filed
15966 Decisions and orders
15968- Special refund procedures; implementation and inquiry (3 documents)
15973

Interior Department

See also Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

NOTICES

Meetings:

- 15983 Alaska Land Use Council

Internal Revenue Service**PROPOSED RULES**

Income taxes:

- 15930 Credit for clinical testing expenses for drugs for rare diseases or conditions

International Trade Administration**RULES**

Export licensing:

- 15867 Phencyclidine classification, shipping tolerances; clarifications

NOTICES

Antidumping:

- 15948 Carbon steel plate from Romania; postponement

Countervailing duties:

- 15951 Fasteners from Japan
 15949 Lamb meat from New Zealand
 15950 Portable aluminum ladders and components of ladders from Mexico

Interstate Commerce Commission**RULES**

Practice and procedure:

- 15900 Rail and water carrier rates; informal complaints; exemption from letter-of-intent requirements

NOTICES

- 15989 Agency information collection activities under OMB review

Justice Department

See Antitrust Division; Juvenile Justice and Delinquency Prevention Office.

Juvenile Justice and Delinquency Prevention Office**NOTICES**

Meetings:

- 15990 Missing Children's Advisory Board

Labor Department

See Employment and Training Administration; Wage and Hour Division.

Land Management Bureau**NOTICES**

Coal leases, exploration licenses, etc.:

- 15983 Wyoming

Meetings:

- 15984 National Public Lands Advisory Council

Maritime Administration**NOTICES**

- 16036 Essential trade routes; intent to redesignate; inquiry; extension of time

Minerals Management Service**NOTICES**

Environmental statements; availability, etc.:

- 15985 Pacific OCS development and production plan

National Council on the Handicapped**NOTICES**

- 16040 Meetings; Sunshine Act

National Institutes of Health**NOTICES**

Meetings:

- 15983 General Research Support Review Committee
 15983 National Cancer Institute; date and location change

National Oceanic and Atmospheric Administration**RULES**

Financial aid to fisheries:

- 15901 Fishermen's Protective Act Procedures; fee adjustment

National Park Service**NOTICES**

Historic Places National Register; pending

nominations:

- 15986 California et al.

Meetings:

- 15985 Overmountain Victory National Historic Trail Advisory Council

- 15987 National Historic Landmarks; proposed boundaries

National Science Foundation**NOTICES**

- 15993 Agency information collection activities under OMB review

National Technical Information Service**NOTICES**

- 15952 Government-owned inventions; availability for licensing

National Transportation Safety Board**NOTICES**

- 16040 Meetings; Sunshine Act

Navy Department**RULES**

- 15891 Conflict of interests; correction

NOTICES

Procurement:

- 15955 Commercial activities, performance; program cost studies (OMB A-76 implementation)

Nuclear Regulatory Commission**RULES**

Practice rules:

- 15865 Exceptions to notice and comment rulemaking procedures; correction

PROPOSED RULES

- 15902 Radiation licenses and safety requirements for well-logging operations

NOTICES

Meetings:

- 15994- Reactor Safeguards Advisory Committee (3 documents)
 15996 Reactor Safeguards Advisory Committee; cancellation
 15994 Reactor Safeguards Advisory Committee; proposed schedule
 15997 Operating licenses, amendments; no significant hazards considerations; monthly notices

Pension Benefit Guaranty Corporation**NOTICES**

- 16028 Privacy Act; systems of records

Railroad Retirement Board**NOTICES**

- 16029 Privacy Act; computer matching program

Research and Special Programs Administration**RULES**

Pipeline safety:

- 15895 Hazardous liquids transportation; intrastate pipelines regulation

Securities and Exchange Commission**PROPOSED RULES****Securities:**

- 15904 Government securities markets and dealers; oversight; need for legislative or regulatory initiatives
- 15912 Transfer agents; registration forms TA-1 and TA-2

NOTICES

- 16033 Agency information collection activities under OMB review
- Applications, etc.:
- 16033 ISFA Mortgage Funding Corp.
- 16031 Medalist Industries, Inc.
- 16031 Security Pacific Corp.
- Self-regulatory organizations; proposed rule changes:
- 16035 National Association of Securities Dealers, Inc. (2 documents)
- Self-regulatory organizations; unlisted trading privileges:
- 16032 Cincinnati Stock Exchange, Inc.
- 16032 Midwest Stock Exchange, Inc.
- 16032 Pacific Stock Exchange, Inc.
- 16036 Philadelphia Stock Exchange, Inc.

Surface Mining Reclamation and Enforcement Office**RULES****Permanent program submission:**

- 15889 West Virginia

Transportation Department

See Coast Guard; Federal Aviation Administration; Maritime Administration; Research and Special Programs Administration.

Treasury Department

See also Alcohol, Tobacco and Firearms Bureau; Comptroller of Currency; Customs Service; Internal Revenue Service.

PROPOSED RULES**Practice before Internal Revenue Service:**

- 15937 Enrollment renewal requirements

NOTICES

- 16036 Agency information collection activities under OMB review

United States Information Agency**NOTICES****Grants; availability, etc.:**

- 16038 International educational and cultural activities

Wage and Hour Division**NOTICES**

- 15993 Learners, certificates authorizing employment at special minimum wages

Separate Parts in this Issue**Part II**

- 16044 Environmental Protection Agency

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids Section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR	49 CFR
Proclamations:	195..... 15895
5321..... 15857	1130..... 15900
5322..... 15859	50 CFR
7 CFR	258..... 15901
52..... 15861	
10 CFR	
2..... 15865	
Proposed Rules:	
19..... 15902	
20..... 15902	
21..... 15902	
30..... 15902	
39..... 15902	
40..... 15902	
51..... 15902	
70..... 15902	
71..... 15902	
150..... 15902	
12 CFR	
612..... 15865	
14 CFR	
39 (2 documents)..... 15865,	
15866	
Proposed Rules:	
71 (2 documents)..... 15902,	
15903	
73..... 15903	
15 CFR	
370..... 15867	
399..... 15867	
17 CFR	
4..... 15868	
140..... 15868	
Proposed Rules:	
240 (2 documents)..... 15904,	
15912	
249b..... 15912	
19 CFR	
19..... 15884	
21 CFR	
558..... 15885	
26 CFR	
Proposed Rules:	
1..... 15930	
27 CFR	
250..... 15886	
275..... 15886	
30 CFR	
948..... 15889	
31 CFR	
Proposed Rules:	
10..... 15937	
32 CFR	
721..... 15891	
40 CFR	
52..... 15892	
60..... 15893	
265..... 16044	
Proposed Rules:	
52..... 15943	
704..... 15943	
46 CFR	
153..... 15895	
154..... 15895	
48 CFR	
Proposed Rules:	
552..... 15943	

Presidential Documents

Title 3—

Proclamation 5321 of April 19, 1985

The President

Jewish Heritage Week, 1985

By the President of the United States of America

A Proclamation

Those who set out to describe Jewish contributions to Western Civilization soon learn how enormous is their task. The Jewish people have contributed to the West its fundamental spiritual values. They introduced the world to monotheism and to the high ethical principles expressed in the Ten Commandments and the writings of the Prophets. The other great religions of the West—Christianity and Islam—can recognize their roots in Judaism. Western literature owes many of its most inspiring themes and allusions to the Hebrew Bible. Great Jewish thinkers—from Philo of Alexandria, to Maimonides and Saadya Gaon, to Spinoza and Martin Buber—have engaged in powerful symbiotic dialogue with Christian and Muslim writers to add vital insights to the Western philosophical tradition. In addition, individual Jews have made extraordinary contributions to the arts, literature, sciences, and humanities.

Yet throughout history the Jewish people have endured countless bloody massacres from the Inquisition to pogroms throughout Europe. None of these remotely approaches the genocidal undertaking of the Nazis who planned the wholesale destruction of European Jewry. In our own time this plan was conceived and, before we could stop it, it had taken the lives of six million Jewish men, women, and children.

Even as we herald the glory of the Jewish heritage, we commemorate as well Jewish suffering in this era. It is up to us to show the way out of this shameful cycle. We must remember the sins of the past and rededicate ourselves to shaping a future marked by tolerance, respect, and compassion. We must rededicate ourselves to the proposition that the Holocaust will remain a solitary horror and that its like will never be repeated.

Jews throughout the world have just celebrated Passover, the holiday that marks the Exodus from Egypt and the deliverance from slavery. The Jewish people came forth from the house of bondage and flowered with an abundance of creativity which has maintained itself until the present day. We learn from this that the emergence from slavery to freedom can release powers hidden within the human spirit, as the Jewish people have once again shown since the end of the Nazi terror. The faith in God and in the Jewish people which sustained them through these tribulations has infused new life into the Jewish communities in America and the State of Israel.

In recognition of the special significance of this time of year for America's Jews, in tribute to the contributions they have made to American life, and in an effort to foster understanding and appreciation of the cultural diversity that has made America a unique society, the Congress, by Senate Joint Resolution 17, has designated April 21 through April 28, 1985, as "Jewish Heritage Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 21 through April 28, 1985, as Jewish Heritage Week. I call upon the people of the United States, Federal, State, and local government officials, and interested organizations to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-9897

Filed 4-19-85; 4:26 pm]

Billing code 3195-01-M

Editorial note: For the President's remarks of Apr. 19, 1985, on signing Proclamation 5321, see the *Weekly Compilation of Presidential Document* (vol. 21, no. 16).

Presidential Documents

Proclamation 5322 of April 19, 1985

Victims of Crime Week, 1985

By the President of the United States of America

A Proclamation

The primary function of a government is to ensure that its citizens can live safely in their communities. Yet each year millions of our citizens face the reality of violent crime, and their lives are forever changed by these acts. Many are afraid to leave their homes after dark. Others are barricaded inside with multiple locks on their doors and steel bars on their windows.

The strength of our justice system depends, in large part, upon the willingness of the innocent victims of crime to cooperate with it. Unless victims participate in the judicial process, society cannot punish criminals and prevent them from committing more crimes. While we need the help of innocent victims, they in turn deserve our support. They do not ask for pity. They ask only for our support as they recover from an unexpected, unwanted, and undeserved trauma.

After decades when most concern was focused on the rights of criminals, the public has recognized that the victims of criminals have rights also. Guided by the recommendations of the President's Task Force on Victims of Crime, my Administration is striving to ensure fair treatment for innocent victims. We are working with national organizations, as well as State and local agencies, to help people whose lives have been shattered through no fault of their own.

One of the most encouraging developments in this regard was the passage of the Victims of Crime Act of 1984, which offers unprecedented assistance to States to meet some of the needs of the targets of violent behavior. We have examined in particular the plight of people who are assaulted by people they know and trust, and we have proposed reforms to assure them the full protection of the law. It is the nature of the crime, not the relationship of the victim to the offender, that should guide the actions of the justice system.

We may reduce the frequency of violent crime, but we will never eliminate it. Every year millions of our fellow citizens will face it for the first time, and millions more will continue to face the daily challenge of lives forever changed by it. As citizens of a Nation promising justice for all, they must be treated with respect and compassion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 14, 1985, as Victims of Crime Week. I commend those innocent victims who have turned their anguish into action to protect their fellow citizens. I urge officials at all levels of government to give special attention to the burdens crime victims face. I ask that all Americans listen and respond to the needs of crime victims, who urgently require and deserve our support.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-9898

Filed 4-19-85; 4:27 pm]

Billing code 3195-01-M

Editorial note: For the President's remarks of Apr. 19, 1985, on signing Proclamation 5322, see the *Weekly Compilation of Presidential Documents* (vol. 21, no. 16).

Rules and Regulations

Federal Register

Vol. 50, No. 78

Tuesday, April 23, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Extracted Honey

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Extracted Honey. This revised rule was developed by the United States Department of Agriculture (USDA) at the request of major segments of the honey industry. This rule will: (1) Provide for the addition of a style for strained honey; (2) expand and update the values for soluble solids; (3) remove the screen test method for the determination of defects; (4) change the tolerance for color designations to be in line with the tolerance for grade determinations; (5) replace dual grade nomenclature with single letter grade designations; (6) change the format of the standards to include definitions of terms and easy to read tables; and (7) incorporate minor editorial changes. Its effect will be to improve the standards and promote orderly and efficient marketing of extracted honey.

EFFECTIVE DATE: May 23, 1985.

FOR FURTHER INFORMATION CONTACT: Floyd M. Haugen, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447-6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no major

increase in cost or prices to consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The present grade standards for extracted honey were last revised in 1951 with no specific provisions for alternate styles. Recent marketing trends indicate a need for a style of product resembling natural honey after extraction from the comb. With this style, clarification by extensive filtering would not be necessary. The current grade standards provide no quality designations that apply to this less clarified style without seriously penalizing the grade. Honey producers, through the Honey Industry Council of America, Incorporated, have requested the USDA to revise the voluntary U.S. Standards for Grades of Extracted Honey with provisions for a new style.

On November 1, 1984, a proposed rule was published in the *Federal Register* (49 FR 43970) that provided for the retention of the present style of "filtered" honey and established an additional style of "strained" honey permitting pollen grains and other fine particles in the product. Other provisions of the proposal included expanding and updating the values for soluble solids, removal of the screen test method for the determination of defects, changing the tolerance for color designations to be in line with the tolerance for grade determinations, replacing dual grade nomenclature with single letter grade designations, and changing the format of the standards to include definitions of terms and easy to read tables.

Two comments were received in response to the proposed rule. Both comments were favorable. Honey packer and producer, Tropical Blossom Honey Company, Incorporated,

supported the revision which provides for the additional style of "strained" honey. The new style permits honey to be processed with small grains of pollen retained in the product. Honey for the domestic market could then be processed the same as is presently done for the export market. The company stated that the Common Market and most foreign countries require pollen to be present in honey, since pollen types can be identified and used as an aid in the identification of the honey's floral source. The company further commented that the standard for the domestic honey pack will be improved as a result of the presence of pollen.

The second comment, from the American Beekeeping Federation, Incorporated, confirmed the need for an additional style of "strained" honey. No adverse comments about the proposal were received from the Federation's members who believe they are being penalized by the grade standards presently in effect.

The proposed revision stated the recommended sample unit size for the determination of color designation be 60 grams (2.1 ounces). With more than one USDA approved device permitted for the determination of color, the amount of product recommended for examination may vary, depending on the device used. To assure an adequate amount of product is available for color analysis, the recommended sample unit size for the determination of color designations should be the amount of product required to adequately fill a color comparator cell of any approved device used for the determination of honey color. The change is reflected in this rule.

List of Subjects in 7 CFR Part 52

Processed Fruits and Vegetables, Food Grades and Standards.

PART 52—[AMENDED]

According, the Subpart-United States Standards for Grades of Extracted Honey (presently consisting of 7 CFR 52.1391 through 52.1404) is revised and redesignated as 7 CFR 52.1391 through 52.1405 to read as follows:

Subpart—United States Standards for Grades of Extracted Honey

Sec.
52.1391 Product description.
52.1392 Types.

Sec.

- 52.1393 Styles.
- 52.1394 Definitions of terms.
- 52.1395 Recommended sample unit sizes.
- 52.1396 Recommended fill of container.
- 52.1397 Color.
- 52.1398 Color designations.
- 52.1399 Tolerance for the designations of color of officially drawn samples.
- 52.1400 Grades.
- 52.1401 Determining the grade.
- 52.1402 Determining the rating for each factor.
- 52.1403 Requirements for grades.
- 52.1404 Sample size.
- 52.1405 Determining the grade of a lot.

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended 1090, as amended (7 U.S.C. 1622, 1624).

§ 52.1391 Product description.

Extracted honey (hereinafter referred to as honey) is honey that has been separated from the comb by centrifugal force, gravity, straining, or by other means.

§ 52.1392 Types.

The type of extracted honey is not incorporated in the grades of the finished product since the type of extracted honey, as such, is dependent upon the method of preparation and processing, and therefore is not a factor of quality for the purpose of these grades. Extracted honey may be prepared and processed as one of the following types:

- (a) *Liquid honey*. Liquid honey is honey that is free from visible crystals.
- (b) *Crystallized honey*. Crystallized honey is honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed, or spread types of crystallized honey.
- (c) *Partially crystallized honey*. [Partially crystallized honey is honey that is a mixture of liquid honey and crystallized honey.

§ 52.1393 Styles.

(a) *Filtered*. Filtered honey is honey of any type defined in these standards that has been filtered to the extent that all or most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed.

(b) *Strained*. Strained honey is honey of any type defined in these standards that has been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Grains of pollen, small air bubbles, and very fine particles would not normally be removed.

§ 52.1394 Definitions of terms.

As used in these U.S. standards, unless otherwise required by the

context, the following terms shall be construed, respectively, to mean:

(a) *Absence of defects* means the degree of freedom from particles of comb, propolis, or other defects which may be in suspension or deposited as sediment in the honey. Classifications for the factor of quality, absence of defects, are:

(1) *Practically free*—the honey contains practically no defects that affect the appearance or edibility of the product.

(2) *Reasonably free*—the honey may contain defects which do not materially affect the appearance or edibility of the product.

(3) *Fairly free*—the honey may contain defects which do not seriously affect the appearance or edibility of the product.

(b) *Air bubbles* mean small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style.

(c) *Aroma* means the fragrance or odor of the honey.

(d) *Clarity* means, with respect to filtered style only, the apparent transparency or clearness of honey to the eye and to the degree of freedom from air bubbles, pollen grains, or other fine particles of any material suspended in the product. Classifications for the factor of quality, clarity, are:

(1) *Clear*—the honey may contain air bubbles which do not materially affect the appearance of the product and may contain a trace of pollen grains or other finely divided particles of suspended material which do not affect the appearance of the product.

(2) *Reasonably clear*—the honey may contain air bubbles, pollen grains, or other finely divided particles of suspended material which do not materially affect the appearance of the product.

(3) *Fairly clear*—the honey may contain air bubbles, pollen grains, or other finely divided particles of suspended material which do not seriously affect the appearance of the product.

(e) *Comb* means the wax like cellular structure that bees use for retaining their brood or as storage for pollen and honey. Fine particles of comb in suspension are defects and contribute to the lack of clarity in filtered style.

(f) *Crystallization* means honey in which crystals have been formed.

(g) *Flavor and aroma* means the degree of taste excellence and aroma for the predominant floral source. Classifications for the factor of quality, flavor and aroma, are:

(1) *Good flavor and aroma for the predominant floral source*—the product

has a good, normal flavor and aroma for the predominant floral source or, when blended, a good flavor for the blend of floral sources and the honey is free from caramelized flavor or objectionable flavor caused by fermentation, smoke, chemicals, or other causes with the exception of the predominant floral source.

(2) *Reasonably good flavor and aroma for the predominant floral source*—the product has a reasonably good, normal flavor and aroma for the predominant floral source or, when blended, a reasonably good flavor for the blend of floral sources and the honey is practically free from caramelized flavor and is free from objectionable flavor caused by fermentation, smoke, chemicals, or other causes with the exception of the predominant floral source.

(3) *Fairly good flavor and aroma for the predominant floral source*—the product has a fairly good, normal flavor and aroma for the predominant floral source or, when blended, a fairly good flavor for the blend of floral sources and the honey is reasonably free from caramelized flavor and is free from objectionable flavor caused by fermentation, smoke, chemicals, or other causes with the exception of the predominant floral source.

(h) *Floral source* means the flower from which the bees gather nectar to make honey.

(i) *Granulation* means the initial formation of crystals in the honey.

(j) *Pfund color grader* means a color grading device used by the honey industry. It is not the officially approved device for determining color designation when applying these United States grade standards for the color of honey.

(k) *Pollen grains* mean the granular, dustlike microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style.

(l) *Propolis* means a gum that is gathered by bees from various plants. It may vary in color from light yellow to dark brown. It may cause staining of the comb or frame and may be found in extracted honey.

§ 52.1395 Recommended sample unit sizes.

(a) Determination of color designation—the amount of product required to adequately fill a color comparator cell of any approved device used for the determination of honey color.

(b) Factors of quality and analysis—100 g (3.5 oz).

§ 52.1396 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purpose of these grades. It is recommended that each container be filled with honey as full as practicable, and with respect to containers of one gallon or less, the honey shall occupy not less than 95 percent of the total capacity of the container.

§ 52.1397 Color.

The color of extracted honey is not a

factor of quality for the purpose of these grades.

§ 52.1398 Color designations.

(a) The color designation of extracted honey is determined (after adjusting for cloudiness in the honey) by means of the USDA approved color standards in accordance with the range as given in Table I.

(b) The respective color designations, applicable range of each color, color range on the Pfund scale, and optical density of freshly prepared caramel-glycerin solutions are shown in Table I.

TABLE I.—COLOR DESIGNATIONS OF EXTRACTED HONEY

USDA color standards designations	Color range USDA color standards	Color range pfund scales millimeters	Optical density ¹
Water white	Honey that is water white or lighter in color	8 or less	0.0945
Extra white	Honey that is darker than water white, but not darker than extra white in color.	Over 8 to and including 17	.189
White	Honey that is darker than extra white, but not darker than white in color.	Over 17 to and including 34	.376
Extra light amber	Honey that is darker than white, but not darker than extra light amber in color.	Over 34 to and including 50	.595
Light amber	Honey that is darker than extra light amber, but not darker than light amber in color.	Over 50 to and including 85	1.389
Amber	Honey that is darker than light amber, but not darker than amber in color.	Over 85 to and including 114	3.008
Dark amber	Honey that is darker than amber in color	Over 114	

¹ Optical Density (absorbance)—log₁₀ (100/percent transmittance), at 560 nm for 3.15 cm thickness for caramel-glycerin solutions measured versus an equal cell containing glycerin.

§ 52.1399 Tolerance for the designations of color of officially drawn samples.

When designating the color of samples that have been officially drawn and which represent a specific lot of honey, the lot shall be considered as one color if the number of containers with honey comprised of a darker color does not exceed the applicable acceptance number indicated in the sampling plans

contained in 7 CFR 52.38 of the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products." Provided, however, that the honey in none of the containers falls below the next darker color designation. Applicable sampling plans and acceptance numbers are shown in Table II.

TABLE II.—SINGLE SAMPLING PLANS AND ACCEPTANCE NUMBERS

Sample Size (number of sample units)	3	6	13	21	29
Acceptance No	0	1	2	3	4

§ 52.1400 Grades.

(a) *U.S. Grade A* is the quality of extracted honey that meets the applicable requirements of Table IV or V, and has a minimum total score of 90 points.

(b) *U.S. Grade B* is the quality of extracted honey that meets the applicable requirements of Table IV or V, and has a minimum total score of 80 points.

(c) *U.S. Grade C* is the quality of extracted honey that meets the applicable requirements of Table IV or V, and has a minimum total score of 70 points.

(d) *Substandard* is the quality of extracted honey that fails to meet the requirements of U.S. Grade C.

§ 52.1401 Determining the grade.

Determining the grade from the factors of quality and analysis.

(a) For the factor of analysis, the soluble solids content of extracted honey is determined by means of the refractometer at 20 °C (68 °F). The refractive indices, corresponding percent soluble solids, and percent moisture are shown in Table III. The moisture content of honey and percent soluble solids may be determined by any other method which gives equivalent results.

(b) For the factors of quality, the grade of extracted honey is determined by considering, in conjunction with the requirements of the various grades, the

respective ratings for the factors of flavor and aroma, absence of defects, and clarity (except the factor of clarity is excluded for the style of strained).

(c) The relative importance of each factor is expressed numerically on the scale of 100. The maximum number of points that may be given each factor is:

Factors	Points
Flavor and aroma	50
Absence of defects	40
Clarity	10
Total score	100

(d) The factor of clarity for the style of strained extracted honey is not based on any detailed requirements and is not scored. The other two factors (flavor and absence of defects) are scored and the total is multiplied by 100 and divided by 90, dropping any fractions to determine the total score.

(e) Crystallized honey and partially crystallized honey shall be liquified by heating to approximately 54.4 °C (130 °F) and cooled to approximately 20 °C (68 °F) before determining the grade of the product.

§ 52.1402 Determining the rating for each factor.

The essential variations within each factor are so described that the value may be determined for each factor and expressed numerically. The numerical range for the rating of each factor is inclusive (for example, 37 to 40 points means 37, 38, 39, or 40 points) and the score points shall be prorated relative to the degree of excellence for each factor.

§ 52.1403 Requirements for grades.

TABLE III.—REFRACTIVE INDICES, CORRESPONDING PERCENT SOLUBLE SOLIDS, AND PERCENT MOISTURE IN EXTRACTED HONEY¹

Refractive index @ 20 °C (range)	Percent soluble solids	Percent moisture
1.4817 to 1.4818	78.1	21.9
1.4819 to 1.4820	78.2	21.8
1.4821 to 1.4822	78.3	21.7
1.4823 to 1.4824	78.4	21.6
1.4825 to 1.4826	78.5	21.5
1.4827 to 1.4828	78.6	21.4
1.4829 to 1.4830	78.7	21.3
1.4831 to 1.4832	78.8	21.2
1.4833 to 1.4834	78.9	21.1
1.4835 to 1.4836	79.0	21.0
1.4837 to 1.4838	79.1	20.9
1.4839 to 1.4840	79.2	20.8
1.4841 to 1.4842	79.3	20.7
1.4843 to 1.4844	79.4	20.6
1.4845 to 1.4846	79.5	20.5
1.4847 to 1.4848	79.6	20.4
1.4849 to 1.4850	79.7	20.3
1.4851 to 1.4852	79.8	20.2
1.4853 to 1.4854	79.9	20.1
1.4855 to 1.4856	80.0	20.0
1.4857 to 1.4858	80.1	19.9
1.4859 to 1.4860	80.2	19.8
1.4861 to 1.4862	80.3	19.7
1.4863 to 1.4864	80.4	19.6
1.4865 to 1.4866	80.5	19.5
1.4867 to 1.4868	80.6	19.4
1.4869 to 1.4870	80.7	19.3
1.4871 to 1.4872	80.8	19.2
1.4873 to 1.4874	80.9	19.1
1.4875 to 1.4876	81.0	19.0
1.4877 to 1.4878	81.1	18.9
1.4879 to 1.4880	81.2	18.8
1.4881 to 1.4882	81.3	18.7
1.4883 to 1.4884	81.4	18.6
1.4885 to 1.4886	81.5	18.5
1.4887 to 1.4888	81.6	18.4
1.4889 to 1.4890	81.7	18.3
1.4891 to 1.4892	81.8	18.2
1.4893 to 1.4894	81.9	18.1
1.4895 to 1.4896	82.0	18.0
1.4897 to 1.4898	82.1	17.9
1.4899 to 1.4900	82.2	17.8
1.4901 to 1.4902	82.3	17.7
1.4903 to 1.4904	82.4	17.6
1.4905 to 1.4906	82.5	17.5
1.4907 to 1.4908	82.6	17.4
1.4909 to 1.4910	82.7	17.3
1.4911 to 1.4912	82.8	17.2

TABLE III.—REFRACTIVE INDICES, CORRESPONDING PERCENT SOLUBLE SOLIDS, AND PERCENT MOISTURE IN EXTRACTED HONEY¹—Continued

Refractive index @ 20 °C (range)	Percent soluble solids	Percent moisture
1.4937 to 1.4938	82.9	17.1
1.4939 to 1.4940	83.0	17.0
1.4941 to 1.4942	83.1	16.9
1.4943 to 1.4944	83.2	16.8
1.4945 to 1.4946	83.3	16.7
1.4947 to 1.4948	83.4	16.6
1.4949 to 1.4950	83.5	16.5
1.4951 to 1.4952	83.6	16.4
1.4953 to 1.4954	83.7	16.3
1.4955 to 1.4956	83.8	16.2
1.4957 to 1.4958	83.9	16.1
1.4959 to 1.4960	84.0	16.0
1.4961 to 1.4962	84.1	15.9
1.4963 to 1.4964	84.2	15.8
1.4965 to 1.4966	84.3	15.7
1.4967 to 1.4968	84.4	15.6
1.4969 to 1.4970	84.5	15.5
1.4971 to 1.4972	84.6	15.4
1.4973 to 1.4974	84.7	15.3
1.4975 to 1.4976	84.8	15.2
1.4977 to 1.4978	84.9	15.1
1.4979 to 1.4980	85.0	15.0
1.4981 to 1.4982	85.1	14.9
1.4983 to 1.4984	85.2	14.8
1.4985 to 1.4986	85.3	14.7
1.4987 to 1.4988	85.4	14.6
1.4989 to 1.4990	85.5	14.5
1.4991 to 1.4992	85.6	14.4
1.4993 to 1.4994	85.7	14.3
1.4995 to 1.4996	85.8	14.2
1.4997 to 1.4998	85.9	14.1
1.4999 to 1.5000	86.0	14.0
1.5001 to 1.5002	86.1	13.9
1.5003 to 1.5004	86.2	13.8
1.5005 to 1.5006	86.3	13.7
1.5007 to 1.5008	86.4	13.6
1.5009 to 1.5010	86.5	13.5
1.5011 to 1.5012	86.6	13.4
1.5013 to 1.5014	86.7	13.3
1.5015 to 1.5016	86.8	13.2
1.5017 to 1.5018	86.9	13.1
1.5019 to 1.5020	87.0	13.0

¹ Temperature corrections: If refractometer reading is made at temperature above 20 °C (68 °F), add 0.00023 to the refractive index for each degree C, or 0.00013 for each degree F. If made below 20 °C (68 °F), subtract correction. The moisture content of honey and equivalent values may be determined by any other method which gives equivalent results.

TABLE IV.—FILTERED STYLE

Factors	Grade A	Grade B	Grade C	Substandard
Analytical Quality				
Percent soluble solids (Minimum)	81.4	81.4	80.0	Fails grade C.
Absence of defects	Practically free—practically none that affect appearance or edibility.	Reasonably free—do not materially affect the appearance or edibility.	Fairly free—do not seriously affect the appearance or edibility.	Fails grade C.
Score points	37 to 40	34 to 36 ¹	31 to 33 ¹	0 to 30 ¹
Flavor and aroma	Good—free from caramelization, smoke, fermentation, chemicals, and other causes.	Reasonably good—practically free from caramelization; free from smoke, fermentation, chemicals, and other causes.	Fairly good—reasonably free from caramelization; free from smoke, fermentation, chemicals, and other causes.	Poor—Fails grade C.
Score points	45 to 50	40 to 44 ¹	35 to 39 ¹	0 to 34 ¹
Clarity	Clear—may contain air bubbles that do not materially affect the appearance; may contain a trace of pollen grains or other finely divided particles in suspension that do not affect appearance.	Reasonably clear—may contain air bubble, pollen grains, or other finely divided particles in suspension that do not materially affect the appearance.	Fairly clear—may contain air bubbles, pollen grains, or other finely divided particles in suspension that do not seriously affect the appearance.	Fails grade C.
Score points	8 to 10	6 to 7	4 to 5 ¹	0 to 3 ¹

¹ Limiting rule—sample units with score points that fall in this range shall not be graded above the respective grade regardless of the total score.

² Partial limiting rule—sample units with score points that fall in this range shall not be graded above U.S. Grade C regardless of the total score.

TABLE V.—STRAINED STYLE

Factors	Grade A	Grade B	Grade C	Substandard
Analytical Quality				
Percent soluble solids (minimum)	B1.4	B1.4	80.0	Fails grade C
Absence of defects	Practically free—practically none that affect appearance or edibility.	Reasonable free—do not materially affect the appearance or edibility.	Fairly free—do not seriously affect the appearance or edibility.	Fails grade C
Score points	37 to 40	34 to 36	31 to 33	0 to 30
Flavor and aroma	Good—free from caramelization, smoke, fermentation, chemicals, and other causes.	Reasonably good—practically free from caramelization; free from smoke, fermentation, chemicals, and other causes.	Fairly good—reasonably free from caramelization; free from smoke, fermentation, chemicals, and other causes.	Poor—Fails grade C
Score points	45 to 50	40 to 44	35 to 39	0 to 34

* Limiting rule—sample units with score points that fall in this range shall not be graded above the respective grade regardless of the total score.

§ 52.1404 Sample size.

The sample size to determine meeting the requirements of these standards shall be as specified in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1–52.83) for lot grading and on-line grading, as applicable.

§ 52.1405 Determining the grade of a lot.

A lot of extracted honey is considered as meeting the requirements for quality and analysis if:

(a) The requirements specified in Table IV and V, as applicable, are met; and

(b) The requirements for the procedures set forth in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1–52.83) are met.

Done at Washington, D.C., on April 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-9603 Filed 4-22-85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Exceptions to Notice and Comment Rulemaking Procedures

Correction

In FR Doc. 85-7848 beginning on page 13006 in the issue of Tuesday, April 2, 1985, make the following correction: On page 13010, in the second column, in the section heading for § 2.805, "Participating" should read "Participation".

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 612

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: On March 25, 1985 [50 FR 11655], the Farm Credit Administration published a final rule which amended its regulations relating to standards of conduct for directors, officers, and employees of Farm Credit System ("System") institutions. In the final rule document, the text of amended paragraph (b) of § 612.2260 was inadvertently omitted. This document corrects the error contained in the final regulation (50 FR 11655).

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020.

Accordingly, the Farm Credit Administration is correcting § 612.2260 as published at 50 FR 11656, by revising paragraph (b) to read as follows:

§ 612.2260 Standards of conduct for agents.

(a) * * *

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law. Associations shall report, upon discovery, suspected nonperformance of duties by an agent to the supervisory bank.

* * * * *

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 [12 U.S.C. 2243, 2246 and 2252])

Donald E. Wilkinson,

Governor.

[FR Doc. 85-9714 Filed 4-22-85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-3; Amdt. 39-5041]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI) Model 47 Series et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires the replacement of certain tail rotor blade assemblies on BHTI Model 47 series helicopters: Continental Copters, Inc., U.S. Army OH-13H; Hawkeye Rotor and Wing, U.S. Army Model OH-13E; Teryjon Aviation, Inc., U.S. Army Model OH-13S; Texas Helicopter Corporation, U.S. Army Model OH-13E and U.S. Army Model OH-13H. During the bonding stage of the manufacturing process the tail rotor blades experienced uneven pressure thus creating a void between the root structure and the skin. This void had a portion of one side that opened to the environment thus allowing corrosion to develop in an area that is virtually uninspectable by visual means. The corrosion could result in the failure of the tail rotor blade. The AD is needed to prevent operation of the helicopter with tail rotor blades which may fail resulting in possible loss of the helicopter.

DATE: Effective April 29, 1985.

Compliance required within the next 100 hours' time in service after the effective date of this AD unless already accomplished.

ADDRESSES: The applicable Alert Service Bulletin, No. 47-84-1, may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

A copy of the alert service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2593.

SUPPLEMENTARY INFORMATION: The FAA has determined that there were 65 tail rotor blades distributed that may contain bonding voids. Since this condition could occur on any of BHTI Model 47 series helicopters; Continental Copters, Inc., U.S. Model OH-13H; Hawkeye Rotor and Wing, U.S. Army Model OH-13H; Teryon Aviation, Inc., U.S. Army Model OH-13S; Texas Helicopter Corporation, U.S. Army Model OH-13H and U.S. Army Model OH-13H; an AD is being issued which requires the tail rotor blade assembly, Part Number (P/N) 47-642-117-1, Serial Numbers (S/N) A-8 through A-72, be removed from service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days. The FAA has determined this regulation involves approximately 65 helicopters for an estimated total cost of \$312,000 or approximately \$4,800 per helicopter.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to be by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to BHTI Model 47 Series helicopters and all other helicopters, certified in all categories, equipped with tail rotor blade assembly, P/N 47-642-117-1, S/N's A-8 through A-72.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of the tail rotor blade accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, remove from service tail rotor blade assemblies Part Number 47-642-117-1, Serial Numbers A-8 through A-72.

(b) Any equivalent method of compliance with this AD must be approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

(c) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the replacement required by this AD may be accomplished.

Note.—Alert Service Bulletin, No. 47-84-11, dated 10-16-84, pertains to this AD.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective on April 29, 1985.

Issued in Fort Worth, Texas, on April 5, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-9078 Filed 4-22-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-1-AD; Amdt. 39-5042]

Airworthiness Directives; Partenavia Costruzioni Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68C-TC and P 68 Observer Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Partenavia Costruzioni Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68C-TC and P 68 Observer airplanes which requires the safety wiring of the aileron control chain, the inspection of the aileron control cables for wear, and in the P 68C-TC Model airplanes only, replacement of two aileron control cable guides. Loss of the chain safety lock and cable wear have been reported which could result in desengagement or breaking of the aileron control cable and loss of lateral control. These actions will assure the integrity of the aileron control system.

DATES: Effective May 28, 1985.

Compliance: As prescribed in the body of this AD.

ADDRESSES: Partenavia Service Bulletins (S/B) No. 59, Revision 1, dated November 30, 1983, S/B No. 59, Revision 2, dated June 27, 1984, Service Instruction No. 18, and S/B No. 64, Revision 1, dated September 10, 1984, applicable to this AD, may be obtained from Partenavia Costruzioni Aeronautiche S.p.A. Via Cava, Casoria-Napoli (Italy). A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimere, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. H. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD applicable to Partenavia Costruzioni Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68C-TC and P 68 Observer airplanes requiring the safety wiring of the aileron control chain, the inspection of the aileron control cables for wear, and on the P 68C-TC airplanes only, replacement of the two aileron control cable guides, was published in the Federal Register on February 4, 1985, (50 FR 4869-4870). The proposal resulted from reports to the manufacturer of loss of the aileron control chain safety lock and aileron control cable wear. These events could result in disengagement or breaking of the aileron control cable and loss of lateral control. As a result, the manufacturer issued S/B No. 59 Revision 1, dated November 30, 1983, S/B No. 59, Revision 2, dated June 27, 1984, Service Instruction No. 18, and S/B No. 64, Revision 1 dated September 10, 1984, to correct the problem.

The Registro Aeronautico Italiano (R.A.I.) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, has issued Italian Airworthiness Directives No. 84-130/P 68-29, Revision 1, and No. 84-146/P 68-32, which makes these service bulletins and the actions recommended therein by the manufacturer mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certificated

for operation in the United States. The FAA relies upon the certification of R.A.I. combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 59, Revision 1, dated November 30, 1983, Service Bulletin No. 59, Revision 2 and Service Bulletin No. 64, Revision 1, dated September 10, 1984, and the issuance of ADs No. 84-130/P 68-29, Revision 1, and No. 84-146/P 68-32 by the R.A.I. and determined that a Notice of Proposed Rulemaking (NPRM) was appropriate.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposal is adopted without change, except for the addition of one serial number previously omitted in the NPRM.

There are approximately eight Model P 68C-TC airplanes and 51 Model P 68 airplanes in U.S. Registry affected by the AD. The cost to the private sector of complying with AD is estimated to be \$2,420 for the entire fleet. Because of the limited number of affected airplanes and their distribution among several owners, no small entities are expected to experience a significant economic impact as a result of this action.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Partenavia Costruzioni Aeronautiche S.p.A.:
Applies to all Models P 68, P 68B, P 68C, P 68C-TC and P 68 OBSERVOR (Serial Numbers (S/N) 001 thru 335, XXX-01TC thru XXX-23TC, and XXX-26TC) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To prevent the loss of aileron control, accomplish the following:

(a) On all P 68 models from S/N 001 through S/N 335, safety lockwire the aileron cable chain safety lock, Part Number (P/N) 68-5.2017-3, as described in Partenavia Service Bulletin (S/B) No. 64, Revision 1, dated September 10, 1984.

(b) On all P 68, P 68B, P 68C, P 68C-TC and P 68 Observer Models from S/Ns 001 to and including 293, 305 and 312, except 261, 279, 284, 286, 290, 291 and 292 visually inspect the aileron control cable behind the engine compartment firewall for wear caused by rubbing against the cable guard plates as described in the Instructions of Partenavia S/B No. 59, Revision 1, dated November 30, 1983, and replace any cables that exhibit wear damage as defined in this S/B.

(c) On all P 68C-TC Models from S/N XXX-01TC to and including XXX-23TC, and XXX-26TC, replace aileron cable guard plates (P/Ns 1.2091B-1 and 1.2091B-2) as described in Partenavia S/B No. 59, Revision 2, dated June 27, 1984.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance may be used, if approved, by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium. (Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, Jan. 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89).

This amendment becomes effective on May 28, 1985.

Issued in Kansas City, Missouri, on April 11, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-9679 Filed 4-22-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370 and 399

[Docket No. 40669-5050]

Clarifications of Export Licensing Policy

AGENCY: Office of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes two clarifications to export policy.

(a) "Phencyclidine" is relocated within a listing of substances controlled by the Drug Enforcement Administration, Department of Justice. Phencyclidine has been listed under "Schedule III Substances," but properly belongs under "Schedule II Substances."

(b) A cross-reference is added to direct exporters to information on shipping tolerances for exported commodities.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Betty A. Ferrell, Exporter Assistance Division (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this rule invokes a foreign affairs function of the United States, the proposed rulemaking procedures and the delay in effective date required under the Administrative Procedure Act are not applicable.

2. This rule does not contain a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 370

Administrative practice and procedure.

15 CFR Part 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 370—[AMENDED]

§ 370.10 [Amended]

1. The *Schedule II Substances* paragraph of § 370.10(d) is amended by inserting "Phencyclidine" between "Secobarbital", and "Methaqualone"; and the *Schedule III Substances* paragraph is amended by removing the word "Phencyclidine".

2. Paragraph (g) of § 399.1 is amended by adding a sentence reading as follows:

§ 399.1 [Amended]

(g) * * * If a unit of weight or measure is given in the Unit paragraph, a shipping tolerance is allowed (see § 386.7).

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: April 15, 1985.

John K. Bojdo, Jr.,

Director, Office of Export Administration,
International Trade Administration.

[FR Doc. 85-9690 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4 and 140

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"; Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") has adopted § 4.5, which excludes certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO") upon the filing of a notice of eligibility. The Commission also has revised § 140.93 to delegate thereunder to the Director of the Division of Trading and Markets the authority to make such special calls as may be necessary to demonstrate compliance with certain provisions of § 4.5. Similarly, and so that it may know the identities of all persons who are operating as a CPO pursuant to an exemption from registration as such, the Commission has revised § 4.13 to require each person who is exempt from

registration as a CPO pursuant to that regulation—i.e., the operator of a family, club or small pool—to file the prescribed statement of exemption that it currently is required to deliver to prospective participants under the regulation. Finally, the Commission has adopted a technical revision to § 4.15, concerning the applicability of reparations proceedings to persons exempt from registration as a CPO.

EFFECTIVE DATES: Sections 4.5, 4.15 and 140.93(a)(5) are effective April 23, 1985. Section 4.13(b)(1) will become effective May 23, 1985.

FOR FURTHER INFORMATION CONTACT:

Barbara R. Stern, Special Counsel for Commodity Pool Operators and Commodity Trading Advisors, Division of Trading and Markets, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The term "commodity pool operator" is defined in section 2(a)(1)(A) of the Commodity Exchange Act, as amended (the "Act")¹ to mean:

[A]ny person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

Section 4m(1) of the Act² makes it unlawful for any person to engage in business as a CPO without being registered as such. Part 4 of the Commission's regulations³ governs the operations and activities of CPOs, through certain operational, disclosure, reporting and recordkeeping requirements set forth in Subpart B thereof.⁴ In particular, § 4.10(d) defines the term "pool" to mean "any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests."⁵

¹ 7 U.S.C. 2 (1982).

² 7 U.S.C. 6m(1) (1982).

³ 17 CFR Part 4 (1984).

⁴ See §§ 4.20-4.23. Part 4 similarly governs the operations and activities of commodity trading advisors ("CTAs"). See §§ 4.30-4.32.

⁵ The term "commodity interest" is defined in § 4.10(a) to mean:

(1) Any contract for the purchase or sale of a commodity for future delivery; and

In connection with the adoption of the Futures Trading Act of 1982 (the "1982 Act"),⁶ the Senate Committee on Agriculture, Nutrition, and Forestry (the "Committee") considered an amendment to the Act which would have exempted the persons specified therein from the CPO definition.⁷ In this regard, the Commission made the Committee aware of the "not a pool" interpretative letters under § 4.10(d) that had been issued by its Division of Trading and Markets, which is responsible for, among other things, administering and interpreting the Part 4 regulations.⁸ In lieu of adopting such an amendment to the CPO definition, the Committee directed the Commission to issue regulations which would have the effect of providing relief from regulation as a CPO for certain otherwise regulated entities. Specifically, the Committee Report states:

[C]ertain entities are not within the intent of the definition of the term 'commodity pool operator', as that term is defined in the Act, unless these entities have other attributes or features which would warrant their regulation as a commodity pool operator. Specifically, an entity regulated under the Investment Company Act of 1940 or an insurance company or a bank or trust company acting in its fiduciary capacity and subject to regulation by any State or the United States could ordinarily be excluded from the definition of the term 'commodity pool operator,' provided that (1) the entity uses commodity futures contracts or options thereon solely for hedging purposes; (2) initial margin requirements or premiums for such futures or options contracts will never be in excess of 5 percent of the fair market value of the entity's assets (in the case of an investment company) or of the assets of any trust, custodial account or other separate unit of investment for which the entity is acting as a fiduciary; (3) the entity has not been and will not be, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodities markets; and (4) the entity will disclose to each prospective participant the purpose of and limitations on the scope of the

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act.

⁶ Pub. L. No. 97-444, 98 Stat. 2294 et seq. (1983).

⁷ See S. Rep. No. 384, 97th Cong., 2d Sess. 79-80 (1982).

⁸ The representations given in connection with the receipt of these "not a pool" letters typically stated that the entity in question (1) was subject to extensive Federal or State regulation; (2) would be using commodity interests for hedging purposes; (3) would commit only a small percentage of its assets—e.g., 5%—to its commodity interest trading; (4) would not be promoted as a commodity pool; and (5) would disclose, as appropriate, the purpose of and limitations on its commodity interest trading. See, e.g., *IDS Bond Fund, Inc.* (December 23, 1981); *Harris Trust and Savings Bank* (November 13, 1981); *Montgomery Street Income Securities, Inc.* (August 14, 1981).

commodity futures or commodity option trading it conducts for such participants.

Also, a defined benefit plan that is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and is insured by the Pension Benefit Guaranty Corporation, or any fiduciary thereof, ordinarily could be excluded from the definition of the term 'commodity pool operator', provided that its commodity futures (or options on futures) trading activity is solely incidental to the conduct of its business as such a plan or as a fiduciary thereof. The Committee understands that such a plan and its fiduciaries are subject to extensive regulation under ERISA. Therefore, while the Commission should retain discretion in this area, the Committee believes that, unless otherwise inappropriate, exemption by rule, regulation, or order from commodity pool operator registration and related requirements, other than antifraud provisions, should generally be granted to these classes of entities.⁹

To implement this directive, on February 8, 1984 the Commission published for comment in the *Federal Register* proposed § 4.5, which would have made available for certain otherwise regulated persons an exemption from registration as a CPO and from the provisions of Subpart B of the Part 4 regulations.¹⁰ As was noted in the preamble accompanying the proposed rule, the Commission strictly followed the language of the Committee Report in specifying the persons who would be eligible for relief under the rule, the qualifying entities for which they would be so eligible and the criteria pursuant to which such qualifying entities would be required to be operated. Pending final action on proposed § 4.5, Commission staff received requests from and issued to such persons "no-action" letters based upon representations virtually identical to those that the proposal would have required to qualify for relief thereunder.¹¹

By that *Federal Register* release the Commission further proposed certain revisions to its rules for CPOs. Among other things, the Commission proposed: to require each person exempt from registration under existing § 4.13—i.e., the operators of family, club and small pools—to file a statement of such

exemption with the Commission (proposed § 4.13(b)(1); and to prohibit CPOs from receiving income generated from pool assets other than to recover actual organizational and offering expenses (proposed § 4.20(d)).

In addition, but without specifying any proposed language, by that *Federal Register* release the Commission also sought comment on whether: Other persons should be exempt from regulation as a CPO; persons registered as an investment adviser ("IA") under the Investment Advisers Act of 1940 should be exempt from registration as a CTA; CPOs should be prohibited from abandoning their pools; the current format for presenting the actual past performance of CPOs, CTAs, and their principals should be revised; and financial requirements for CPOs should be adopted.

The comment period on these proposals originally was due to expire on April 9, 1984. To maximize public participation in this rulemaking process, the Commission extended the comment period to May 9, 1984.¹² Moreover, because certain of the proposals—e.g., proposed § 4.5—pertained to persons whose primary regulator was not the Commission and who thus might not have been aware of these proposals in time adequately to review them and to comment thereon, to obtain the participation of these persons in the rulemaking process Commission staff sent letters requesting comment to such persons' primary regulators and industry associations and to numerous committees of the American Bar Association.¹³

The Commission received 55 comment letters on these proposals: 5 from persons registered as a CPO; 3 from persons registered as a CTA; 8 from persons registered both as a CPO and as a CTA; 5 from persons registered as a futures commission merchant ("FCM"); 1 from a person registered both as an FCM and as a CPO; 1 from a commodity exchange; 1 from an industry-wide self-regulatory organization designated as such by the Commission; 3 from trade associations representing Commission registrants; 11 from an international regulatory agency; 2 from Federal regulatory agencies; 1 from a State regulatory agency; 2 from persons registered as an IA; 3 from insurance companies; 1 from a bank; 2 from

fiduciaries of pension plans; 6 from other trade associations; 4 from bar associations; and 6 from law firms.

The Commission has carefully reviewed each of those comment letters. Based upon that review and its careful reconsideration of its proposals, the Commission is now adopting in § 4.5 a rule which it believes is not only responsive to the concerns of the commenters but also is consistent with the intent of the Committee Report and, thus, the Commission's regulatory objectives in this rulemaking proceeding.¹⁴ As is discussed further below, the Commission also now is adopting the revisions it proposed to §§ 4.13, 4.15 and 140.93, in essentially the form as such revisions were proposed. The Commission is not at this time taking any final action on proposed § 4.20(d) or on any of the issues on which the Commission, without specifying any proposed language, also sought comment—e.g., whether the current format for presenting the actual past performance of CPOs, CTAs and their principals should be revised. The Commission does, however, intend in the near future to propose rules on these matters which, as the rules being adopted today, would reflect the Commission's review of the comments thereon and the Commission's careful reconsideration of its proposals.

II. Section 4.5: Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

A. The Nature of the Relief Available Under the Rule

As proposed, § 4.5 would have made available for certain otherwise regulated persons an exemption from registration as a CPO and from the provisions of Subpart B of the Part 4 regulations.¹⁵ Under the proposal, then, these persons would have continued to come within the CPO definition. As is discussed more fully below, § 4.5 as adopted generally follows the same structure of the rule as proposed. The nature of the relief available under the final rule is,

⁹ S. Rep. No. 384, 97th Cong., 2d Sess. 80 (1982).

¹⁰ 49 FR 4778.

¹¹ These letters, which were issued by the Division of Trading and Markets, stated that the Division would not recommend that the Commission take any enforcement action against the otherwise regulated persons named therein for failure to register as a CPO or to comply with the provisions of Subpart B of Part 4. See, e.g., Division of Trading and Markets Staff Interpretative Letter 84-5, Comm. Fut. L. Rep. (CCH) ¶ 22,023 (February 24, 1984); Division of Trading and Markets Staff Interpretative Letter 84-4, Comm. Fut. L. Rep. (CCH) ¶ 22,022 (February 24, 1984).

¹² 49 FR 13378 (April 4, 1984).

¹³ In all, 27 such letters were sent by the Division of Trading and Markets.

¹⁴ In addition, 56 members of the National Association of Futures Trading Advisors sent basically identical letters in support of the comments of this trade association.

¹⁵ Further in this regard, and as is noted above, section 2(a)(1)(A) provides the Commission with authority to exclude from the CPO definition "such persons not within the intent of this definition."

¹⁶ As is noted above, section 4m(1) of the Act requires registration as a CPO of persons who come within the CPO definition. Among other things, the Commission's regulations which implement this requirement require the filing of registration applications and fingerprint cards and the payment of attendant registration fees. See, e.g., § 3.14, 17 CFR 3.14 (1984). As is also noted above, Subpart B prescribes certain operational, disclosure, reporting and recordkeeping requirements for CPOs. See §§ 4.20-4.23.

however, more extensive than that which was proposed.

While virtually all of the commenters agreed with the purpose of proposed § 4.5—i.e., to eliminate duplicative and unnecessary regulatory burdens—they asserted that to meet this purpose the Commission would need to make certain modifications to the proposal. Specifically, many commenters urged the Commission to reconsider the nature of the relief to be afforded by § 4.5. They stated that to effectuate the directive of the Committee Report, such relief should provide exclusion from the CPO definition (as opposed to inclusion within the definition and exemption from registration and regulatory requirement). Certain of these commenters also contended that since the proposal as drafted would require eligible persons to concede they are CPOs, it would provide for an exemptive rule which would necessitate the acknowledgement of a regulatory status that might not, in fact, be applicable. Still other commenters contended that a rule as detailed as § 4.5 was unnecessary to effectuate the directive of the Committee Report. They argued that a brief interpretative statement issued by the Commission was all that was needed.

The Commission has carefully considered these comments and also has reconsidered its interpretation of the nature of the relief intended by the Committee Report. As a result, the Commission has adopted in § 4.5 a rule that makes available an exclusion—not merely an exemption—for certain otherwise regulated persons from the definition of the term "commodity pool operator."¹⁷ Moreover, because of the nature and extent of regulatory relief being provided, the Commission believes that a rule such as § 4.5—not merely an interpretative statement—is the appropriate means by which such relief should be issued. The Commission wishes to emphasize, however, that while such otherwise regulated persons may be outside the CPO definition, they still are "persons" for the purposes of the Act and the Commission's regulations thereunder.¹⁸ Thus, they

remain subject to, among other things, Section 4b of the Act,¹⁹ which prohibits fraudulent transactions, and Part 18 of the regulations,²⁰ which requires certain reports to be furnished by traders in the commodity interest markets.

Numerous commenters expressed concern that proposed § 4.5 appeared to provide an exclusive means for relief from regulation as a CPO. Thus, they argued, if a specified otherwise regulated person was unable to meet such criteria as the Commission decided to adopt, or if such person was not so specified, it would *prima facie* be a CPO. These commenters recommended that adoption of a rule such as proposed § 4.5 should provide a regulatory "safe harbor," but not the exclusive means for relief from regulation as a CPO. The Commission agrees with this recommendation, and by this Federal Register release confirms that, notwithstanding the conclusion of this rulemaking proceeding, it will expect the staff to continue to issue such interpretations of § 4.5 as may be necessary and appropriate to fulfill the purposes of the rule.²¹

The Commission also agrees with the recommendation that it clarify the effect of § 4.5 on those persons who previously have obtained relief from regulation as a CPO through, as noted above, the receipt of staff "not a pool" letters under § 4.10(d) and, subsequent to the issuance of proposed § 4.5, through the receipt of staff "no-action" letters. As is discussed below, as proposed and as adopted § 4.5(c) requires that a notice of eligibility must be filed with the Commission to claim the exclusion provided by the rule and § 4.5(d) requires that, subsequently, supplemental notices must be filed as necessary to render the notice of eligibility accurate and complete. In proposing § 4.5 the Commission stated:

As the representations given in connection with the receipt of the previously issued "not a pool" staff interpretative letters closely parallel the representations which would be required in connection with qualifying for the exemption contained in proposed § 4.5, the Commission does not believe that it should be necessary for the recipients of such interpretative letters to, in effect, "re-submit" an application for exemption—i.e., to file an initial notice of eligibility—in the event the proposal is adopted. However, to insure that these persons (and entities) would be in

compliance with the requirements of the proposed rule, the Commission intends to take the position that such persons must file supplemental notices in the event that any of the representations they previously had made to the Commission changed or that, to the extent that the proposal would require any additional representations, they were not in compliance with them. This position would ensure equal treatment of all persons claiming exemption under the rule.²²

Consistent with this statement, and for the reasons given therein, the Commission has determined to deem each request for a "not a pool" interpretation or a "no-action" position which did, in fact, receive such interpretation or position as a notice of eligibility properly filed under § 4.5(c).²³ Of course, this position assumes that a person who is the subject of such interpretation or position is complying and will continue to comply with all of the provisions of § 4.5 and, in particular, with the operating criteria of § 4.5(c)(2) discussed below.

One commenter recommended that to insure equal treatment of all persons claiming relief under § 4.5 the Commission should clarify that to the extent it adopts operating criteria less stringent than those required for receipt of a "not a pool" or a "no-action" letter, the recipients of such letters should be able to comply with such less stringent criteria. The Commission agrees with this recommendation and intends to so interpret § 4.5.

Another commenter recommended that the Commission clarify the effect of § 4.5 on the recipients of staff "no-action" letters. As this person noted, because the recipients of those letters were deemed to be CPOs, they remained subject to section 4c of the Act,²⁴ which prohibits fraudulent activities by CPOs (and by CTAs). Because § 4.5 as adopted provides an exclusion as opposed to an exemption for the persons specified therein from the CPO definition, the provisions of section 4c would not be applicable to persons who qualified for relief thereunder. Consistent with the position taken above, the Commission finds that the recipients of the staff "no-action" letters

¹⁷ In furtherance of the relief from registration as a CPO contained in proposed § 4.5, the Commission also proposed to amend § 3.16(a)(4), 17 CFR 3.16(a)(4) (1984), to provide that an associated person of a person exempt from registration as a CPO and from Subpart B under § 4.5 would, likewise, be exempt from registration with the Commission. However, in light of the relief afforded in § 4.5 as adopted, it has been unnecessary for the Commission to adopt that amendment to § 3.16(a)(4).

¹⁸ This is consistent with the language in the Senate Committee Report that relief "other than [from] antifraud provisions should generally be granted."

¹⁹ 7 U.S.C. 6b (1982).

²⁰ 17 CFR Part 18 (1984).

²¹ It also should be noted that, under § 4.12, the Commission may exempt any person from any provision of Part 4—e.g., from any provision of § 4.5—upon a finding that "the exemption is not contrary to the public interest and the purposes of the provision from which the exemption is sought."

²² 49 FR 4778, 4782-83.

²³ As the Commission noted in proposing § 4.5, not all of the persons who requested such staff interpretations received them. Where one or more of the requisite representations were absent, the Division of Trading and Markets declined to issue such relief but, instead, issued certain other relief from the provisions of §§ 4.21, 4.22 and 4.23 subject to such persons' registration as a CPO. See 49 FR 4778, 4785. See also, Division of Trading and Markets Staff Interpretative Letter 84-8, Comm. Fut. L. Rep. (CCH) ¶22,048 (March 14, 1984).

²⁴ 7 U.S.C. 6c (1982).

similarly are not subject to section 40.²⁵ Those persons would remain subject, however, to all other applicable provisions of the Act and the Commission's regulations thereunder—e.g., to section 4b of the Act and Part 18 of the regulations.

As is noted above, § 4.5 is effective today upon its publication in the *Federal Register*. In this regard the Commission recognizes that, pending the completion of the § 4.5 rulemaking proceeding, there may have been uncertainty on the part of persons affected thereby as to whether, and under what criteria, they would be eligible to claim the relief from regulation as a CPO available under the final rule. In light of that uncertainty, those persons may be engaging in activities for which they now would be eligible for regulatory relief under § 4.5 as adopted without having sought (and received) a "not a pool" or a "no-action" letter from Commission staff. In light of such uncertainty, and subject to continued compliance with all of the other provisions of § 4.5, the Commission has determined that it will not take any enforcement action solely for failure to register as a CPO against any such person who files a notice of eligibility as specified in § 4.5(c) within 60 days from the date hereof.

B. The Persons and Entities to Whom the Exclusion is Available

In proposing § 4.5, the Commission noted that under its regulatory framework a CPO and its pool generally must be organized as separate legal entities.²⁶ The Commission further noted that to be effective, then, any relief to be provided by § 4.5 "must not only be applicable to a 'person' who could be deemed to be a CPO but also to the pool such person intended to operate—i.e., its 'qualifying entity.'"²⁷ Accordingly, as

proposed and as adopted, paragraph (a) of § 4.5 pertains to the persons who are eligible for relief under the rule and paragraph (b) pertains to the corresponding qualifying entity for which such relief is available provided, as is discussed below, that such qualifying entity is operated in a specified manner.

In its proposal, the Commission explained that it had strictly followed the language of the Committee report in specifying the persons and the qualifying entities eligible for relief from regulation as a CPO. In response to the comments received, the Commission believes that certain clarifications, refinements and expansion of the relief are appropriate.

Prior to discussing the specific persons (and their qualifying entities) eligible for relief under § 4.5, the Commission wishes to note that, as proposed and as adopted, the scope of such relief includes the principals or employees of such persons.²⁸ One commenter on this aspect of the proposal stated that such an extension would be useful and appropriate. Other commenters, however, contended that the Commission's proposal did not extend far enough. For example, one commenter suggested that the phrase "principal or employee" be expanded to include persons who functionally, but not literally, come within such phrase. Another commenter suggested that the phrase be expanded to include "such other fiduciaries that fall within the intent" of § 4.5.

In response to these two commenters, the Commission wishes to explain that in proposing and in adopting § 4.5 it has carefully followed the directive in the Committee Report that relief from regulations as a CPO under the rule be afforded to otherwise regulated persons. Whether a person such as those these commenters suggest is, in fact, otherwise regulated to the extent that the persons specified in § 4.5 are regulated remains to be determined on a case-by-case basis in the context of the particular factual situation applicable to such person. Thus, the Commission is unable to incorporate the recommendations of these commenters into § 4.5 as adopted. Consistent with its prior practice in this area and with its statement made earlier in this *Federal Register* release, however, the

Commission invites interested persons to seek such staff determinations of the scope of the term "persons, and any principal or employee thereof" in § 4.5 as shall be necessary and appropriate to effectuate the purposes of the rule.

Registered Investment Companies. As proposed and as adopted, the first "otherwise regulated person" specified in § 4.5 is "an investment company registered as such under the Investment Company Act 1940,"²⁹ and its qualifying entity similarly is such a registered investment company. Sections 4.5 (a)(1) and (b)(1).³⁰ The comments received on these provisions of the proposed rule basically asked the Commission first to clarify whether a registered investment company's depositor, sponsor, underwriter, or IA came within the definition of the term "commodity pool operator" and, if so, then to also provide relief from regulation as a CPO for such persons equivalent to the relief to be provided for the investment company itself. The Commission does not believe that the activities in which such persons typically engage are, without more, the activities in which a CPO typically engages.³¹ Rather, the Commission believes that such persons are outside the CPO definition and, therefore, that relief from regulation as a CPO is not necessary in order to exclude such persons from the CPO definition.³²

²⁵ 15 U.S.C. 80a et seq. (1982).

²⁶ As is noted above, under the Commission's regulatory framework, and in particular under § 4.20(a), a CPO and its pool must be separate legal entities. Section 4.20(a) recognizes, however, that in the case of a corporation the CPO and its pool may be one and the same and, accordingly, that rule provides exemption from its requirements in the case of certain corporations—i.e., those who demonstrate to the Commission that they will be operated in a manner consistent with the purposes of the rule.

²⁷ See n. 26, *supra*.

²⁸ In issuing "no-action" letters under proposed § 4.5 Commission staff similarly had occasion to consider this issue. See, e.g., Division of Trading and Markets Staff Interpretative Letter 84-11, Comm. Fut. L. Rep. (CCH) ¶ 22,290, at 29,457 n. 5 (July 17, 1984), wherein the staff stated:

We historically have treated registered investment companies and their officers and directors as those persons subject to CPO regulation. You have requested our opinion, however, that neither the Fund's registered investment advisor * * * (the "Adviser"), nor its registered broker-dealer * * * (the "Distributor"), nor any officer, director or employee of the Adviser or Distributor is a CPO. Proposed Rule 4.5 does not contemplate that any such person would be a CPO. See, e.g., Rule 3.16(a)(5), which generally exempts from registration as an associated person to a CPO persons registered with the National Association of Securities Dealers as a registered representative or registered principal. 46 FR 35248 (August 3, 1983). Accordingly, we do not believe that any such opinion is necessary at this time.

²⁵ Proposed § 4.5 would have retained the applicability of § 4.41, which prescribes certain advertising standards for CPOs (and for CTAs), to persons who qualified for relief from CPO regulation. Similarly, since § 4.5 as adopted excludes persons who have qualified for relief thereunder from the CPO definition, the provisions of § 4.41 would not be applicable to them.

²⁶ See § 4.20(a) and the discussion of that regulation in 49 FR 4778, 4780. As the Commission further noted in its proposal:

Frequently, Commission staff is called upon by members of the public to offer guidance on determining who, in fact, would be the CPO of a particular pool. In providing such guidance, the staff typically looks at such factors as who will be acting in the manner contemplated by the statutory definition of the term commodity pool operator—e.g., who will be promoting the pool by soliciting, accepting or receiving from others, property for the purpose of commodity interest trading—and who will have the authority to hire (and to fire) the pool's CTA and to select (and to change) the pool's FCM.

²⁸ As the Commission explained in its proposal: Since who the pool operator of a given entity would be might extend to operating officials, principals or employees, to clarify the scope of the exemption, paragraph (a) includes not only the person itself (e.g., a bank or trust company) but also "any principal or employee thereof." *Id.*

²⁷ *Id.*

Accordingly, the Commission has determined to adopt as proposed these provisions of § 4.5.

The Commission also believes it necessary to clarify these provisions as they would apply to a registered series investment company where one or more portfolios thereof intend to trade commodity interests. The Commission is aware that, in the course of issuing "no-action" positions under proposed § 4.5, its staff has had occasion to consider under what circumstances relief from regulation as a CPO should be afforded to such series investment companies. Specifically, the staff issued such a "no-action" position where each portfolio that intended to trade interests met the operating criteria of the proposal and where there was separate ownership in and identities of each of the company's portfolios—regardless of whether any (other) such portfolio intended to trade commodity interests.³⁹ The Commission believes that this approach is a sound one and, accordingly, intends that § 4.5 as adopted be so applied to a registered series investment company.

Insurance Companies. Proposed § 4.5 next proposed to provide relief from regulation as a CPO to "an insurance company subject to regulation by any State" with respect to "the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary." The commenters on this proposed provision strongly took issue with it.

³⁹ See, e.g., Division of Trading and Markets Staff Interpretative Letter 84-13, Comm. Fut. L. Rep. (CCH) § 22,302 (August 1, 1984), where two of the investment company's four portfolios intended to trade commodity interests. As the staff stated therein:

Proposed Rule 4.5 does not specifically address the instant situation—i.e., where only certain portfolios of a registered series investment company intend to engage in commodity interest transactions. However, in light of the separate ownership in and identities of the Fund's Portfolios—e.g., separate investment objectives, net asset valuation and dividend policies—we believe it consistent with the intent of proposed Rule 4.5 to treat as separate entities each of the two Portfolios that intend to engage in commodity interest trading for purposes of determining whether the criteria of the proposal have been met. Conversely, where such separate ownership and identities are not present, we might find it more consistent with proposed Rule 4.5 to aggregate all of the portfolios of a series investment fund in determining whether the criteria have been met. *Id.* at 29,499.

In issuing such "no-action" letters, the staff further expressed its belief that such a determination was particularly appropriate to the proposed "hedging" and "5%" operating criteria. As the staff explained:

A contrary finding would enable a Portfolio to commit 5% of the Fund's total assets for its commodity interest positions which, in turn, might enable the Portfolio to commit more assets than are necessary to hedge its own, separate actual or anticipated cash positions. *Id.* n. 3.

Specifically, these commenters asserted that the proposed provision would go far beyond the intended scope of the Committee Report by, in effect, deeming the holding of commodity interests in an insurance company's general assets as the operation of a commodity pool. As one of these commenters explained:

Life insurance companies use premiums to acquire assets such as real estate or corporate bonds, which satisfy contractual obligations under the life insurance product contract. Life insurance companies treat these contractual obligations as a liability, against which the company maintains a reserve representing the difference between the actuarially determined value of future benefits payable and future premiums receivable. Reserves are established as a way of determining or measuring the assets the company must maintain to meet its future commitments under the policies it has issued. The funds accumulated in support of these reserves are invested by the insurance company in assets that are the property of the company. Unlike some entities within the scope of the proposal's relief, contractholders of traditional life insurance products do not own any interest in the general assets of a life insurance company. As a result of this significant distinction, a life insurance company's general assets are not a pool in which policyholders participate.⁴⁰

This commenter further explained that, while fixed insurance products constitute the vast majority of life insurance contracts, some companies offer another category of products known as variable contracts in which a contract-holder's benefit under the contract may, in part, vary in relation to the value of specifically identified assets contained in a life insurance separate account. The commenter thus reasoned that if relief from regulation as CPO—i.e., inclusion within the scope of § 4.5—was in fact necessary with respect to insurance companies, at most such relief was necessary with respect to such separate accounts.

The Commission agrees that, for the reasons provided to it, the holding of commodity interests in an insurance company's general assets should not make the insurance company a commodity pool. The Commission further believes, however, that the devoting of assets to commodity interest trading by an insurance company separate account could constitute the operation of a commodity pool. Accordingly, the Commission has adopted in § 4.5 a provision that limits the availability of the rule—and therefore the need to seek the relief provided by the rule—to the operation

of insurance company separate accounts. Section 4.5(b)(2).

Financial Depository Institutions. The third group of persons for whom § 4.5 proposed to provide relief from regulation as a CPO was certain financial depository institutions as specified in the Committee Report—i.e., "a bank or trust company subject to regulation by any State or the United States" with respect to "the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary." The Commission does not agree with, and has not adopted in § 4.5, the recommendation of one commenter that relief from regulation as a CPO should be available to any federally or state regulated bank or trust company in all instances, regardless of whether such bank or trust company complied with the operating criteria proposed for all other persons and qualifying entities. Such relief would be contrary to that intended by the Committee Report. Moreover, it would provide such banks and trust companies with an unwarranted competitive advantage over those persons who do not meet the operating criteria or other requirements of § 4.5 and who therefore must register with the Commission as a CPO.

Other commenters on this portion of the Commission's proposal generally recommended that it be expanded to also make regulatory relief available to such other financial depository institutions who are regulated in a manner equivalent to the persons specified in the proposal. The Commission believes this recommendation useful and appropriate and, accordingly, has incorporated it into § 4.5 as adopted. Section 4.5(a)(3). Thus, the final rule expands coverage thereunder to include such persons as federally or state regulated bank affiliates, savings institutions and U.S. branches and agencies of foreign banks.

Another commenter noted that frequently a bank or trust company will act in a fiduciary capacity without having any investment authority and that in such limited capacity it would be unable to make the representations on operating criteria proposed in the rule. Accordingly, this commenter recommended that regulatory relief be applicable with respect to accounts for which a bank or trust company serves as trustee and also has investment authority. The Commission similarly believes this recommendation has merit.

⁴⁰ Comment letter of the American Council of Life Insurance, p. 5 (May 9, 1984).

and has adopted it in the final rule. Section 4.5(b)(3).³⁵

Pension Plans. The fourth and final person for whom the Commission proposed to provide relief from regulation as a CPO was "a trustee or named fiduciary of a defined benefit pension plan" that is "subject to the Employee Retirement Income Security Act of 1974 ["ERISA"]³⁶ and is insured by the Pension Benefit Guaranty Corporation." Based upon its evaluation of the comments received, its reconsideration of the Committee Report and its review of the definitions of the term "commodity pool operator" and "pool," the Commission has extensively revised this proposed provision.

The comments received on this provision not only questioned its scope, but also the need for such relief from regulation as a CPO as it would provide. Certain commenters asserted that the Commission should expressly exclude from the proposed operational criteria of § 4.5—and therefore from the definition of the term "pool" in § 4.10(d)—all pension plans subject to ERISA. The Commission does not believe that the Committee Report and the definitions of the terms "commodity pool operator" and "pool" contemplate relief of such nature and breadth. The Commission does believe, however, that certain ERISA plans merit such relief. As was explained by one commenter:

[A] non-contributory plan, *i.e.*, one in which all contributions are solely made by an employer, can never be a commodity pool, because no funds are solicited from participants and only the employer bears the funding responsibility of the plan if there are losses. Similarly, defined benefit plans are not likely to be commodity pools, even if contributions are permitted, because such plans normally require the employer to cover losses and permit the employer to benefit

from excess earnings not needed to fund the benefit.³⁷

Accordingly, § 4.5 as adopted expressly excludes a noncontributory plan, whether defined benefit or defined contribution, or under certain circumstances a contributory defined benefit plan, which is covered under Title I of ERISA. Sections 4.5(a)(4) (i) and (ii). In this regard, the Commission notes that Title I contains the operative provisions of ERISA—*e.g.*, reporting, disclosure, administration and enforcement provisions—which, for the purposes of this rulemaking, would make a pension plan "otherwise regulated." Accordingly, for these purposes, the Commission believes that coverage under Title I should be controlling.

The Commission is aware that certain contributory defined benefit plans have an "additional" feature which allows for (additional) voluntary employee contributions, the benefit from which depends on the performance of the investments into which such contributions are placed. Because this feature has "pool" attributes to it, the availability of the express exclusion in § 4.5 for a contributory defined benefit plan is subject to the proviso that "with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts."³⁸ Section 4.5(a)(4)(ii).

Similarly, but for other reasons, the Commission agrees with those commenters who contended that governmental pension plans are not appropriate subjects for regulation and, therefore, that they need not qualify for any exclusion from such regulation. As was stated in connection with excluding such plans from coverage under ERISA:

State and local governments must be allowed to make their own determination of the best method to protect the pension rights of municipal and state employees. These are questions of state and local sovereignty and the Federal government should not interfere.

Likewise the various retirement plans established by the Federal government would be exempt since these are regulated by other statutes.³⁹

Thus, § 4.5 as adopted also expressly provides exclusion for such

governmental plans.⁴⁰ Section 4.5(a)(4)(iii).

Thus, § 4.5 excludes each of these three types of pension plans from the definition of the term "pool" in § 4.10(d). The Commission wishes to make clear, however, that this exclusion is only applicable at the pension plan level itself and not at any subsequent level where the assets of any such pension plan are commingled with the assets of any other person in trading commodity interests and gains and losses are not separately accounted for. For example, in the event that the assets of two or more such plans are commingled in a trust account or other type of investment vehicle which intends to trade in, among other things, commodity interests, the Commission in appropriate cases where that vehicle was not subject to an effective exclusion under § 4.5 would deem the operation of such vehicle as the operation of a commodity pool and such plans as its pool participants. In such event, with respect to such vehicle compliance with the provisions of § 4.5—or regulation as a CPO—would be required.

With respect to other pension plans covered under Title I of ERISA—*e.g.*, a contributory defined contribution plan, the Commission has determined to include such other plans as qualifying entities in § 4.5 and, thus, to enable the trustee or named fiduciary of any other such plan to claim the relief from regulation as a CPO available under § 4.5—subject, of course, to compliance with the provisions of the rule. Section 4.5(b)(4). The Commission believes that such relief is appropriate in light of the pervasive regulatory scheme to which such other plans are subject under Title I of ERISA.⁴¹ The Commission further believes that such relief is necessary in light of the fact that in trading commodity interests such other plans would possess characteristics typical of commodity pools—*e.g.*, contributions to such plans are made by the participants therein and the benefits to be received from such contributions depend upon the performance of the investments into which those contributions are placed.

Whether any other pension plan not specified in § 4.5 merits such relief as the rule provides, or any other regulatory relief, remains to be determined on a case-by-case basis in light of the facts particular to such

³⁵ But see n. 52 *infra*. The Commission is aware that certain bank affiliates have registered with the Commission, and are engaging in business as an FCM. In this regard, the Commission wishes to make clear that the relief available under § 4.5 only is available for the otherwise regulated persons and entities specified in the rule. Thus, if an FCM—albeit a bank affiliate—intended to engage in business as a CPO, § 4.5 would be unavailable to it and registration as a CPO would be required of it. This is because the primary regulator of FCMs is the Commission. Moreover, by making § 4.5 available to such other financial depository institutions—and to all of the other persons specified in the rule—the Commission does not mean to imply that it has made any determinations regarding the propriety of trading in commodity interests by such persons in general or the particular conditions under which such trading should take place. Rather, and as is discussed more fully below, the Commission intends that any such determinations remain with, and are to be made by, such persons' "other regulator."

³⁶ 29 U.S.C. 1001 *et seq.* (1982).

³⁷ Comment letter of Goldman, Sachs & Co., p. 5 (May 8, 1984).

³⁸ To stay outside the proviso—and to maintain its exclusion from the term "pool"—such plan may seek to address this matter through segregation.

³⁹ Legislative History of the Employee Retirement Income Security Act of 1974, 97th Cong. 2d Sess. 224 (Comm. Print 1976).

⁴⁰ Specifically, this express exclusion is applicable to "a plan defined as a governmental plan in section 3(32) of Title I" of ERISA.

⁴¹ As is noted above, Title I contains provisions concerning reporting, disclosure, administration and enforcement.

plan—e.g., whether, and to what extent, the operations of such plan are subject to other regulation. As explained above, the Commission intends that its staff shall issue such determinations. The Commission further intends that, as it gains experience in this area, it will reevaluate this aspect of the rule.

The Commission emphasizes, however, that the fact that a pension plan is not covered under Title I of ERISA does not, in each and every case, make such plan a commodity pool—ineligible as a qualifying entity under § 4.5(b)(4). In this regard, the Commission notes that certain plans or arrangements, such as an Individual Retirement Account or a plan which covers only the owner of a business (and his or her spouse) are, in effect, excluded from coverage under Title I of ERISA.⁴² By their very nature, such plans are not within the meaning and intent of the term "pool" contained in § 4.10(d), nor are their "operators" within the CPO definition contained in section 2(a)(1)(A) of the Act.⁴³

Finally, the Commission wishes to respond to those commenters who asserted that relief under § 4.5 should not be limited to "a trustee or named fiduciary" of a specified pension plan but, rather, that relief should be available to all ERISA fiduciaries of such a plan. The Commission believes that for the purposes of § 4.5 such a sweeping provision would be overly broad. While the Commission acknowledges that the fiduciary standards required of such persons are extremely high, it is not, however, persuaded that such standards make such persons "otherwise regulated" to the same extent as trustees and named fiduciaries of ERISA plans. Accordingly, the Commission has adopted as proposed the term "a trustee or named fiduciary." Section 4.5(a)(4). The

Commission does, however, invite interested persons to seek staff determinations of this term as it may apply to related persons or affiliates of the persons specified therein.

C. The Notices Required to Claim and to Maintain the Exclusion

In General. The Commission's proposal would have required, initially, the filing of a notice of eligibility to claim relief from regulation as a CPO and, subsequently, the filing of such supplemental notices as would be necessary to amend the notice of eligibility so as to render it accurate and complete. The Commission disagrees with the contention of several commenters that such notices were unnecessary. In light of the nature of the relief available under § 4.5, the Commission believes that the filing of such notices are necessary and appropriate. The Commission has both the right and the obligation to know who is claiming the relief available under the rule and to have that knowledge kept current. Those commenters also contended that the proposed notices might prove unduly burdensome to the persons required to file them. Here, too, the Commission disagrees. In the preamble accompanying its proposal the Commission requested comment on whether those notices should be supported by any specific documentation and, if so, what documentation would be appropriate.⁴⁴ In response to that request, one commenter asserted that, in light of the antifraud standards specified by such persons' other regulators, such documentation was unnecessary. Another commenter also argued that such documentation was unnecessary in light of the Commission's proposal (adopted in § 4.5(c)(2)(v)) to require such documentation on an "as needed" basis. The Commission believes these comments have merit and is not now adopting any documentation requirement.⁴⁵ Moreover, as proposed and as adopted, the notice of eligibility is effective upon filing. Section 4.5(c)(4). In light of the foregoing, the Commission believes that no undue burdens will be imposed on persons seeking to claim relief under § 4.5.

Thus, § 4.5 as adopted requires both the filing of initial and supplemental notices to claim and to maintain exclusion from the definition of the term "commodity pool operator." Sections 4.5

(c) and (d), respectively. Specifically, the notice of eligibility must be filed with the Commission "prior to the date upon which such person intends to operate the qualifying entity pursuant to the exclusion provided by this section" (§ 4.5(c)(3)) and any supplemental notice must be filed within 15 days after the occurrence of an event that renders the notice of eligibility inaccurate or incomplete (§ 4.5(d)(2)).

The Commission also has adopted as proposed certain other requirements applicable to any notice required to be filed under § 4.5—i.e., it must be in writing, signed by a duly authorized representative, and filed with the Commission. Section 4.5(f). In addition, to ensure the proper administration of § 4.5, the Commission has adopted a requirement that any such notice also must be filed, at the address specified in the rule, with the National Futures Association (the "NFA"), which now has responsibility for registering CPOs. Section 4.5(f)(4).⁴⁶ The one commenter on this portion of the proposal addressed the provision on duly authorized representatives and, in particular, the provision that "if such person [who files a notice] is a corporation, [the notice must be signed] by the chief executive officer, chief financial officer or counterpart thereto." That commenter contended that the provision would unnecessarily limit authorized signatories, by failing to recognize that typically corporate entities have a broader range of individuals who are authorized to sign submissions on behalf of the corporation. The Commission believes that this argument has merit and, accordingly, has adopted in the final rule the commenter's recommendation that any notice required to be filed under § 4.5 must be "signed by a duly authorized representative"—i.e., a representative who has been authorized to bind the person on whose behalf the notice has been filed to the information and the representations contained in the notice. Section 4.5(f)(2).

⁴² Pursuant to section 17 of the Act, 7 U.S.C. 21 (1982), the Commission has designated the NFA as a registered futures association with responsibility for the regulation of persons who are required to be registered with the Commission—e.g., CPOs. See NFA Bylaw 1101. See also, NFA Compliance Rule 2-13, which provides in pertinent part that "[a]ny Member who violates any of CFTC Regulations 4.1 and 4.16 through 4.41 shall be deemed to have violated an NFA requirement." Thus, a requirement that any notice filed under § 4.5 must be filed with the NFA is necessary to ensure that this designated self-regulatory organization is timely apprised of the activities of persons who are acting as a CPO—and persons who have qualified under § 4.5 for exclusion from the CPO definition.

⁴³ See 29 CFR 2510.3-2(d) and 2510.3-3 (b) and (c) (1984) which concern, respectively, certain Individual Retirement Accounts and so-called "Keogh" or "H.R. 10" plans.

⁴⁴ See Division of Trading and Markets Staff Interpretative Letter 83-9, Comm. Fut. L. Rep. (CCH) ¶21,909 (November 3, 1983), wherein Commission staff stated that a joint account comprised, in effect, of certain immediate family members would not be a "pool" within § 4.10(d). Cf. 43 FR 18557, 18561 (May 1, 1978), wherein the Securities and Exchange Commission interpreted the "natural person" exemption under Section 11(a)(1)(E) of the Securities and Exchange Act of 1934 as including "an individual retirement account established by a natural person"—but not "group retirement accounts." In this regard, and also as is stated above, where the assets of a pension plan such as those specified in n. 42 are commingled with the assets of another person in trading commodity interests and gains and losses are not separately accounted for, with respect to such commingled trading vehicle compliance with § 4.5—or regulation as a CPO—would be required.

⁴⁵ 49 FR 4778, 4780.

⁴⁶ The Commission's experience with § 4.5 subsequently may indicate, however, that such documentation is necessary and appropriate for the administration of the rule.

The Information That the Notice of Eligibility Must Contain. Subject to the exception discussed below, as proposed and as adopted the notice of eligibility must contain the name of the person claiming exclusion under § 4.5, the qualifying entity for which such exclusion is being claimed, and the applicable provisions under paragraphs (a) and (b) of the rule pursuant to which they are eligible for exclusion. Section 4.5(c)(1).

The Commission further proposed that where the qualifying entity was a registered investment company, the notice of eligibility also would contain information on any exemptions concerning disclosure and financial reporting to which the investment company was subject under the Federal securities laws or, if it was not so subject, a statement to that effect. The Commission explained that this proposal arose out of a concern that "the nature and extent of such exemptions could be such that the investment company should not be treated as an 'otherwise regulated person' for purposes of proposed § 4.5." ⁴⁹ The two persons who commented on this proposed provision ⁵⁰ asserted that it was unnecessary inasmuch as, among other things, an exemptive order under Section 6(c) of the Investment Company Act of 1940—to which the Commission specifically referred in the preamble accompanying its proposal—can only be issued on the basis that regulation under the specific provision from which exemptive relief is sought is not necessary for the public interest or the protection of investors. The Commission finds that this argument and others presented to it have merit and, accordingly, has not adopted its proposed provision concerning special disclosures by registered investment companies.⁵¹

The other commenters on this portion of the Commission's proposal recommended clarification of the proposal as it would apply to qualifying entities of banks or trust companies. See § 4.5(c)(1)(iii). They argued that, in the case of a bank or trust company which intends to trade commodity interests on behalf of various fiduciary accounts, the

provisions of the notice of eligibility could be interpreted to require inclusion of extensive lists of such accounts and to require frequent amendment as such accounts are opened and closed. The Commission does not believe that the notice of eligibility needs to be interpreted so broadly—and to impose such an administrative burden—to fulfill its purposes. One commenter recommended that a bank should be able to file a "blanket" notice which would notify the Commission that the bank serves as fiduciary for trusts the operation of which, absent qualifying for relief under § 4.5, might require the bank to register as a CPO. The Commission disagrees with this contention because, as is explained more fully above, it has the right and the obligation to know who is claiming relief under § 4.5 and the qualifying entity for which such relief is being claimed. Rather, the Commission intends to interpret the notice of eligibility to require the name of each ultimate trading vehicle through which a bank or trust company, or any other such financial depository institution, intends to trade commodity interests on behalf of various fiduciary accounts—e.g., the name of each such collective trust fund into which such accounts have been placed.⁵² The Commission further intends that, assuming each such trading vehicle is named, the financial depository institution need only file one notice of eligibility to claim relief under § 4.5 with respect to all such trading vehicles.

The Representations Concerning Operating Criteria that the Notice of Eligibility Must Contain. The Commission also proposed that the notice of eligibility would be required to contain certain representations concerning the standards by which a qualifying entity would be operated with respect to its commodity interest activities. These standards—which would be the operating criteria for relief from regulation as a CPO—would have required the entity: (1) To trade commodity interests solely for bona fide hedging purposes; (2) to commit no more than 5% of its assets as margin or premiums for its commodity interest trading; (3) to not market itself as a commodity pool; (4) to disclose to its participants the purpose of and limitations on its commodity interest trading; and (5) to submit to special calls for information by the Commission. The Commission explained that, with the exception of the representation concerning special calls, these

standards of operation were taken from the Committee Report. The Commission also noted that:

[A]lthough this proposal has not itself gone beyond the specific language of the Committee Report to further define the meaning and scope of these criteria, the Commission specifically is requesting comments on the actual content of these representations which address specifically the differences in the other regulatory frameworks to which the qualifying entities set forth in the proposal are subject. The Commission expects that the final rules on these representations will more fully describe the parameters of such operating conditions. Moreover, the Commission would expect to interpret the express criteria of the rule in accord with the specific standards contained in the staff interpretations of § 4.10(d) which have been issued to date. Absent comment which suggests further interpretation or modification of the rule itself, the Commission expects to continue to follow such interpretations and to consider requests for further delineation of the criteria based on specific fact situations.⁵³

Most of the persons who commented on proposed § 4.5 addressed this portion of the Commission's proposal. The Commission has given particular attention to those comments. Thus, while the five operating criteria the Commission has adopted are essentially modeled on those originally proposed, as is discussed below the Commission has made certain fine tuning changes to them to reflect those comments consistent with the general intent of the Committee Report. Section 4.5(c)(2).

Prior to discussing each of these criteria in detail, the Commission wishes to respond to those persons who contended that the Commission should not use the Committee Report as a basis for interfering with the ability of the persons specified therein to use commodity interests in managing their investment portfolios and, further, that any limitation on such use should come from the Federal or State regulators of such persons' overall operations. Neither the proposed nor final rule limits such use. Rather, § 4.5 provides relief for those persons from certain regulation that otherwise would be required as a result of their use of the commodity interest markets. Moreover, to clarify the intent and effect of the representations on operational criteria that the notice of eligibility must contain, the Commission has adopted a proviso, which follows such representations in the rule, that the making of those representations "shall not be deemed a substitute for compliance with any criteria applicable

⁴⁹ 49 FR 4778, 4781.

⁵⁰ One of these persons was the Division of Investment Management of the Securities and Exchange Commission.

⁵¹ In the preamble accompanying its proposal the Commission also requested comment on whether the notice of eligibility should require similar disclosure on exemptions with respect to any other qualifying entities. 49 FR 4778, 4781. The Commission did not receive any comments responsive to that request and has not adopted any such disclosure requirements in the final rule.

⁵² See, e.g., Division of Trading and Markets Staff Interpretative Letter 84-16, Comm. Fut. L. Rep. (CCH) ¶ 22,347 (September 7, 1984).

⁵³ 44 FR 4778, 4781.

to commodity futures or commodity options trading established by any regulator to which such person or qualifying entity is subject." Thus, the Commission's intent in adopting the § 4.5 criteria is to distinguish when certain entities should be treated as commodity pools and their operators as CPOs—and not to establish what should be regarded as prudent trading strategies.

Also, in response to the commenters on this portion of the proposal, the Commission wishes to make clear that, as the other information the notice of eligibility must contain, the representations on operating criteria must be made with respect to the ultimate trading vehicle through which an eligible person intends to trade commodity interests.⁵²

1. The Bona Fide Hedging Representation. The first proposed representation concerning the standards by which a qualifying entity would be required to be operated was that the entity "will use commodity futures or options contracts solely for bona fide hedging purposes." In the preamble accompanying its proposal the Commission stated that it intended to interpret this representation as being controlled by the definition of the term "bona fide hedging transactions and positions" contained in § 1.3(z)(1).⁵³ The

Commission explained that, among other things, this definition means:

[I]n using commodity futures and options contracts the qualifying entity must take into account the correlation in the fluctuations in the value of its futures or options positions relative to the value of its actual or anticipated cash position. This also means that such futures or options positions must be entered into with the intent required by § 1.3(z)(1).⁵⁴

The Commission then expressed its concern that certain "anticipatory" or "long hedge" strategies might not, in fact, come within the scope of § 1.3(z)(1) and proposed to adopt a "completion" test for the commodity interests employed in such strategies to ensure that they would, in fact, come within the rule. Specifically, the Commission stated:

Where there is an anticipatory transaction but no fixed commitment to make a transaction at a later time in a physical marketing channel, the Commission is concerned that distinguishing between what is the anticipatory reduction of risk and speculation may be exceedingly difficult. This is particularly true in the case of pooled investment media where there is no independent business need generated by the commercial activities of the entity (other than the need to increase investment return) for

Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging for purposes of section 4a of the Act unless their purpose is to offset price risk incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and unless the provisions of paragraphs (z) (2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

⁵⁴ 49 FR 4778, 4781. In considering requests for a "no-action" position under proposed § 4.5, Commission staff accordingly so interpreted the bona fide hedging criterion. See, e.g., *The Government Securities Series of the Hutton Investment Series Inc.* (April 4, 1984), wherein the staff advised that the investment company's contemplated purchase of put options on interest rate futures contracts "to hedge a long position in the underlying futures contract" did not appear to be bona fide hedging activity. Thus, the staff issued the requested "no-action" position subject to the investment company's representation that it would not purchase put options for such purpose "without seeking further guidance from the Commission." See also, *Colonial Tax-Exempt High Yield Trust* (November 1, 1984), wherein for purposes of the requested "no-action" position the staff similarly questioned certain other contemplated uses of the commodity interest markets. As the staff stated therein:

The Prospectus also discusses [another strategy], which we do not believe would result in "bona fide hedging transactions and positions". . . . The . . . strategy is selling tax-exempt bond futures contracts (if and when approved) and buying U.S. Government bond financial futures contracts, "to protect against shifts in value due to over-or-under valuation of the tax-exempt bond market in relation to the taxable bond market"—i.e., an inter-market straddle position. . . . Accordingly, the position we are taking herein presumes that the Trust will not engage in [this strategy]. Page 2, n.2.

using the commodity markets to anticipate future commitments.

Nonetheless, the Commission believes that there may be situations where it would not be economically appropriate for such an entity to complete an anticipatory hedge.⁵⁵ In this connection, the staff has employed an intent test to determine whether an anticipatory hedge which is not in fact followed by the purchase of the commodity—i.e., "completed"—is outside the scope of § 1.3(z)(1). Accordingly, Commission staff previously has required that to receive a "not a pool" interpretation an entity must represent that it "will use commodity futures or options contracts solely for bona fide hedging purposes" and, further, that: (1) all transactions will be entered into with the intent required by § 1.3(z)(1); and (2) a substantial majority—i.e., 75%—of all anticipatory hedge transactions entered into each year will be completed. The Commission proposes to continue to so interpret the hedging criterion for purposes of the exemption in § 4.5 but specifically requests comments on whether additional or different standards should be set forth.⁵⁶

In light of the comments received in response to this request, and the Commission's further deliberations on this proposed criterion, as adopted the first representation concerning the standards by which a qualifying entity must be operated maintains the proposed requirement that a qualifying entity "will use commodity futures or commodity options contracts solely for bona fide hedging purposes" and further, as recommended by one commenter, "within the meaning and intent of § 1.3(z)(1)." Section 4.5(c)(2)(i). In addition, as is discussed more fully below, the Commission is providing certain clarifications of the completion component of this representation. Moreover, the Commission has determined to provide an alternate criterion for certain long strategies—even though it does not regard strategies which meet this alternate test as coming within the meaning and intent of § 1.3(z)(1). Section 4.5(c)(2)(i) (A)-(C).

With respect to the bona fide hedging representation, certain commenters requested clarification of the completion requirement and, in particular, of the requirement that 75% of all anticipatory transactions be completed. One commenter stated that the proposal was unclear as to when the intent to

⁵⁵ The Commission provided the following example of such a situation:

[I]f due to drastically changed market conditions since the purchase of a long futures contract, the cash market for the commodity subject to the contract has declined and a further decline appears likely, the purchase of the commodity at the time of offset of the contract may be prudent. 49 FR 4778, 4782 n. 15.

⁵⁶ 44 FR 4778, 4781-82.

⁵² See Division of Trading and Markets Staff Interpretative Letter 85-5, Comm. Put. L. Rep. (CCH) § 22,506 (February 28, 1985), wherein Commission staff was unable to issue the requested "no-action" position under proposed § 4.5 because the ultimate trading vehicle was unable to make each of the proposal's representations with respect to each of the underlying pooled trading vehicles. Based upon other facts presented to it, however, the staff issued certain other relief.

In this connection, the Commission notes that where trading in commodity interests by a qualifying entity is not through a pooled investment vehicle or for its own account certain other issues may arise—e.g., whether in directly receiving money for trading in commodity interests, an otherwise eligible person is acting as an FCM.

⁵³ Section 1.3(z)(1), 17 CFR 1.3(z)(1) (1984), states:

Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising.

(ii) The potential change in the value of liabilities which a person owes or anticipates incurring, or

(iii) The potential change in the value of services which a person provides, purchases or anticipates providing or purchasing.

complete a transaction would accrue.⁵⁷ That commenter recommended that the requisite intent should be judged as of the date on which the transaction is entered into, rather than later when the transaction is or is not completed, and that the 75% test should be used as a general standard for later review. The Commission generally believes this recommendation useful and appropriate, and intends to so interpret the completion requirement. Another commenter stated that the proposal was unclear as to when such long transactions should be completed—e.g., within one year from the date entered into or at some indefinite time in the future. The Commission does not believe that specific time constraints need be imposed upon the completion requirement. The real test is whether the intention to complete can be substantiated—i.e., through a course of conduct. In this connection, the Commission wishes to make clear that the "bona fide hedging" representation would not be violated if a qualifying entity "rolled" its long (or short) position in a commodity interest over to another position in the same commodity interest but with an earlier or later expiration date—so long as the termination of the initial or any such subsequent (rollover) position takes place at the same time as the completing cash market transaction.

One the whole, however, the commenters took vigorous issue with the use of a specific percentage in the Commission's proposed completion test. They generally contended that this approach was unduly mechanical and unrealistic and that it could force portfolio managers to enter into imprudent transactions. Certain of those commenters recommended that the Commission should merely retain the "substantial majority" language, without attaching any specific percentage thereto. They argued that in satisfaction of this requirement, the Commission should only require a qualifying entity to document the completion of its long transactions and to explain the circumstances surrounding uncompleted transactions. As those commenters noted, Commission staff had taken this approach in issuing "not a pool" interpretations under § 4.10(d).⁵⁸ The Commission notes, however, that as the staff continued to develop and to refine the representations necessary for relief from regulations as a CPO, it did require

a representation that "a substantial majority—i.e., 75%—of all anticipatory transactions would be completed."⁵⁹ Moreover, the approach recommended by those commenters would require the Commission continuously to evaluate the use of commodity interests by each person who has claimed the regulatory relief available under § 4.5.⁶⁰ This would be contrary to the Commission's intent, as is noted above, that the rule alleviate the need for the Commission to make case-by-case determinations in respect to meeting the eligibility and operating criteria requirements.

Other commenters questioned the applicability of the provisions of § 1.3(z)(1), and in particular the Commission's interpretation of those provisions in the context of long transactions, to the persons and qualifying entities eligible for relief from regulation as a CPO. They asserted that since § 1.3(z)(1) was developed at a time when the commodity interest markets were used to facilitate the movement of physical goods from the producer to the consumer, the rule was not written in terms applicable to portfolio managers—i.e., persons charged with maximizing returns. Thus, those commenters argued that the application of § 1.3(z)(1) is appropriate in a merchandising environment.⁶¹ Many of them further recommended various alternate representations to the Commission's proposed "bona fide hedging" representation.

Although the Commission does not necessarily agree with such comments, based upon its review of those comments and of recommendations that alternate representations be considered, the Commission has provided in § 4.5(c)(2)(i) the following alternate representation that may be made with respect to long positions in a commodity future or commodity option contract:

[T]he underlying commodity value of such contract at all times will not exceed the sum of:

(A) Cash set aside in an identifiable manner, or short-term United States debt obligations or other United States dollar-denominated high quality short-term money market instruments so set aside, plus any funds deposited as margin on such contract;

(B) Cash proceeds from existing investment due in 30 days; and

⁵⁷ See, e.g., *The Government Securities Series of the Hutton Investment Series Inc.*, supra n. 54.

⁵⁸ Compare § 4.5(c)(2)(v), which provides authority to the Commission to make such special calls as may be necessary to demonstrate compliance with the provisions of § 4.5(c).

⁵⁹ In this regard, those commenters compared the trading of commodity interests in a merchandising environment to such trading in a financial environment.

(C) Accrued profits on such contract held at the futures commission merchant.

With respect to certain of the terms used in this alternate representation, the Commission believes the following explanations helpful. For a futures contract, the "underlying commodity value" is computed by multiplying the size of the contract by the daily settlement price of the contract. For an option on a futures contract, the underlying commodity value is the underlying commodity value of the number of futures contracts underlying the option. For an option on a physical commodity, the underlying commodity value is computed by multiplying the contract size by the daily cash or spot futures price of the underlying commodity. The term "high quality" refers to a determination of such a rating as shall have been made by any major rating service.

The Commission emphasizes, however, that this alternate representation is not intended to encourage or to authorize the trading of commodity interests as a replacement for trading in the corresponding cash markets. Rather, it requires that the trading of commodity interests must be incidental to a qualifying entity's activities in the underlying cash market. This representation, then, as all of the other representations on operating criteria specified in § 4.5(c)(2), is necessary to comply with the intent of the Committee Report that regulatory relief be issued unless a person in operating a qualifying entity possesses "other attributes or features" which would warrant its regulation as a CPO. Moreover, the Commission further wishes to emphasize that in adopting this alternate representation it has not sought to disturb or to expand upon the provisions of § 1.3(z)(1) and the staff's prior interpretations of those provisions. Rather, the representation is intended to serve "as a substitute for compliance with the provisions of this paragraph."

Finally, the Commission wishes to respond to the commenter who requested clarification on the application of the bona fide hedging requirement to the writing of commodity option contracts for yield purposes. That commenter acknowledged that such activity might not come within the meaning and intent of § 1.3(z)(1). It asserted, however, that such option writing should be permitted pursuant to guidelines that effectively would make them "covered" in substance if not in form, and thereby would, according to that commenter, provide a relatively "risk-free" service. The Commission believes that whether the writing of

⁵⁷ As noted above, the "bona fide hedging" criterion requires that all transactions be entered into with the intent required by § 1.3(z)(1).

⁵⁸ See, e.g., Division of Trading and Markets Staff Interpretative Letter 83-5, Comm. Fut. L. Rep. (CCH) ¶ 21,905 (September 13, 1983).

commodity options is such activity as should merit relief under § 4.5 remains to be determined on a case-by-case basis in light of the facts particular to such option writing. In this connection, the Commission is aware that its staff has had occasion to make such determinations in the course of issuing "not a pool" interpretations and "no-action" positions.⁶² Consistent with that practice, and prior statements in this preamble, the Commission invites interested persons to continue to seek such staff interpretations.

2. The 5% Limitation on Assets Representation. The second proposed representation was that the qualifying entity "will not enter into commitments which require as deposits for initial margin for [its] futures or options contracts more than 5% of the fair market value of its assets."

The Commission disagrees with those commenters who argued that neither the 5% limitation nor any other such percentage limitation was necessary or appropriate to fulfill the intent of the Committee Report. In response, the

Commission notes that the limitation is suggested by the Committee Report and is intended as a bright line to distinguish between entities which should not be subject to direct Commission regulation and those which should be. As the Commission explained in its proposal, the reason for this criterion is that regulatory relief "is not intended to be for pooled media primarily dealing in commodity interest trading but for qualifying entities that use commodity interests as risk reduction transactions as an adjunct to their other stated investment activities."⁶³ Indeed, as another commenter noted, some restriction on initial commitments for commodity interests is necessary to ensure that a qualifying entity does not engage in speculation through "overhedging"—i.e., by "hedging" more than 100% of its assets—and thereby violate the first operating criterion that it will use commodity interests "solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1)." Moreover, based on the experience of Commission staff in issuing "not a pool" and "no-action" letters and its own review of the current initial hedge margins and premiums for the commodity interest in which the Commission is aware that the persons and qualifying entities specified in § 4.5 intend to trade, the Commission believes that the 5% limitation generally should not pose any serious or regular impediments to the use of commodity interests by such persons and entities.⁶⁴

Thus, the Commission has adopted as the second operating criterion a 5% limitation on the fair market value of a qualifying entity's assets that may be committed as initial margin and premiums for the entity's commodity interest positions. Section 4.5(c)(2)(ii).

The Commission has, however, adopted in the final rules two provisions concerning the computation of the 5% limitation that are intended to eliminate certain impediments to qualifying for relief from regulation as a CPO that commenters perceived in the proposal.

First, the Commission has clarified in the final rule that such 5% may not exceed the fair market value of a qualifying entity assets, "after taking into account unrealized profits and unrealized losses on any such contracts it has entered into." This provision which is consistent with generally accepted accounting principles in this area, is intended to ensure that the fair market value of the entity's assets accurately takes into account all of those assets, that the 5% limitation is and remains appropriately computed and, thus, that the entity's hedge positions may be maintained. In this regard, the Commission wishes to clarify that in determining the amount of initial margin of a commodity interest to be included in computing the 5% limitation, a qualifying entity only needs to include such amount as is required by the exchange on which such commodity interest is traded. Moreover, where a qualifying entity grants an option (whether it be a put or a call), in computing the 5% limitation it need not include the in-the-money amount of the position at the time it was established. Of course, for administrative convenience, the qualifying entity may include in its computation the amount of initial margin held at any time by the FCM through whom the commodity interest is traded—which amount must, at a minimum, equal the amount required by the exchange.⁶⁵ This will

⁶² See, e.g., *Colonial Tax-Exempt High Yield Trust*, supra n. 54, wherein Commission staff stated:

[The Trust contemplates] writing put options on futures contracts the Trust has sold, to offset the Trust's positions in such futures contracts. Notwithstanding the fact that this strategy may not increase the Trust's risks as a participant in the commodity interest markets, it would not result in a bona fide hedging position. Moreover, this strategy cannot be considered as merely effecting an offsetting position, because such offset will only occur if and when the holder of the option exercises the option. Accordingly, the position we are taking herein presumes that the Trust will not engage in [this strategy]. Page 2, n.2.

Compare, Division of Trading and Markets Staff Interpretative Letter 83-10, Comm. Fut. L. Rep. (CCH) §21,910 (November 21, 1983), wherein the staff concluded that certain option writing activity came within proposed § 4.5. As the staff stated:

A critical indicia of [the] intent [required by § 1.3(z)(1)] will be the extent to which [the Fund's] commodity interest transactions are entered into for traditional hedging purposes—that is, futures contracts are sold or simultaneously put options are purchased and call options are written to protect against a decline in the value of securities that [the Fund] owns.

In this connection, it appears that the commodity interest transactions in which [the Fund] intends to engage—i.e., selling stock index futures contracts or simultaneously purchasing put options and writing call options on stock index futures contracts—would place [the Fund] on the "short" side of the market in such transactions. It also would appear, then, that all of [the Fund's] commodity interest transactions should in fact be entered into for traditional hedging purposes to maintain our conclusion that [the Fund] would not be a "pool."

With respect to [the Fund's] proposal to simultaneously purchase put options on stock index futures contracts and to write call options on such contracts, you have represented that: (1) The contracts subject to such options, and the quantities, strike prices and expiration dates thereof, would be identical for each such option; and (2) the transactions would be executed to protect against a decline in the value of securities that [the Fund] owned. *Id.* at 27,938-39.

⁶³ 49 FR 4778, 4782.

⁶⁴ For example, with respect to the June '85 Treasury bond futures contract traded on the Chicago Board of Trade, on March 14, 1985 the initial hedge margin for the contract (\$1,500) represented approximately 2.2% of the contract's market value based on that day's settlement price (\$68,312.50). Similarly, with respect to the June '85 S&P 500 Index contract traded on the Chicago Mercantile Exchange, on that day the initial hedge margin for the contract (\$2,500) represented approximately 2.7% of the contract's market value based on that day's settlement price (\$91,150). Thus, a 5% limitation on the amount of the fair market value of a person's assets that may be committed as initial margin for its futures contracts would enable the person to enter into contracts with a market value of, in the first example, approximately 2.3 times the fair market value of its assets (5/2.2) or alternatively, in the second example approximately 1.9 times the fair market value of its assets (5/2.7). Of course, to meet and to maintain the bona fide hedging criterion, a qualifying entity may not enter into futures contracts in quantities that exceed the relevant hedge ratio for such cash and futures market positions.

⁶⁵ See § 1.56(b), 17 CFR 1.56(b) (1984), which provides in pertinent part:

No futures commission merchant * * * may in any way represent that it will, with respect to any commodity interest in any account carried by the futures commission for or on behalf of any person: * * *

(3) Not call for or attempt to collect initial * * * margin as established by the rules of the applicable board of trade.

In this connection, the Commission wishes to explain that initial and any subsequent margin is, in effect, set at three levels: at the clearinghouse—which generally sets original margin at a level equal to or less than exchange initial margin; at the exchange; and at the FCM—who frequently requires its customers to provide funds in excess of the minimum margin requirements set by the exchange. For the purposes of § 4.5, the Commission does not believe that the clearinghouse requirements, which are computed on a net basis in most cases, can be used. Nor does the Commission believe that, for these purposes, the FCM requirement need be controlling (as opposed to optional) since this could induce a qualifying entity to choose an FCM based on factors other than service and execution.

eliminate the need to establish separate systems to assess continued compliance with the representation.

Second, the Commission has addressed the concerns of those commenters who asserted that where a qualifying entity purchases an option (whether a put or a call), the proposed rule failed to take into account the fact that the premium paid for the purchase of an in-the-money option may exceed the initial margin on the underlying futures contract, although the market risk may be no greater. Thus, those commenters argued that by requiring the entire amount of option premiums to be included in computing the 5% limitation without regard to the intrinsic value of the option, the proposal would result in decisions made on other than economic—e.g., bona fide hedging—criteria. In response to those commenters, the Commission has adopted in the final rule a proviso that "in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 5%."⁶⁶ The Commission is aware that such computation may require detailed and difficult calculations and, accordingly emphasizes that, as indicated in the rule, the use of such computation is optional.

The Commission also recognizes that, notwithstanding the foregoing revisions and clarifications, there may be extraordinary circumstances in which a qualifying entity which has been in compliance with the 5% limitation inadvertently exceeds the limitation. This could occur, for example, if subsequent to establishment of a commodity interest hedge position by a qualifying entity, the exchange on which such commodity interest was traded increased initial margin requirements significantly and deemed them applicable to existing as well as newly established positions.⁶⁷ In such

circumstances, the Commission does not intend to interpret § 4.5 as requiring the forced liquidation of such positions as would be necessary to bring the qualifying entity within the 5% limitation.

3. *The Marketing Representation.* As proposed and as adopted, the third representation is that the qualifying entity "will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets." Section 4.5(c)(2)(iii). Also as proposed, the Commission intends the term "marketing" to include oral, written and electronic promotional materials and that an entity would be "marketing participations" in a manner inconsistent with the required representation if it was actively promoted as "a hybrid—e.g., a securities and a commodities—trading vehicle or as an investment vehicle in which commodity futures and options trading was particularly significant and critical to the growth of its assets, as opposed to being incidental to protecting those assets against a decline in value."⁶⁸ In its proposal the Commission acknowledged, however, that the other regulatory agencies to which the qualifying entity is subject may prescribe the form and content of the entity's marketing materials and therefore requested comment on whether "marketing" should be further interpreted in light of the prescriptions of such other regulatory agencies.

In response to that request, two commenters recommended that the Commission should allow within the marketing representation any promotional material required by and consistent with the policies of a qualifying entity's other Federal or State regulator. Several other commenters recommended that the Commission should distinguish between marketing a qualifying entity as a commodity pool and accurate disclosure of the entity's limited use of commodity interests. They thus recommended that the marketing representation should permit a qualifying entity to describe accurately in its sales literature the limited use of its commodity interest trading and how it believes that use will be beneficial—which, in effect, would be consistent with the disclosure representation, discussed below. The Commission agrees with those recommendations and, accordingly, intends to so interpret the marketing representation.

4. *The Disclosure Representation.* As proposed and as adopted, the fourth representation is that the qualifying entity "will disclose in writing to each prospective participant the purpose of and the limitations on the scope of the commodity futures and commodity options trading in which the entity intends to engage." Section 4.5(c)(2)(iv). Again, in view of the differences in the other regulatory frameworks to which the entity may be subject and, in particular, any differences in applicable disclosure requirements, the Commission requested comment on whether further specificity as to how this criterion would best be met was needed.

In response to that request, several commenters generally asserted that the disclosure representation was not appropriate for certain qualifying entities—i.e., ERISA plans and bank commingled trust funds—in light of the manner in which such entities customarily are operated and administered. In consideration of such concerns, and at the recommendation of other commenters, the Commission intends that the disclosure representation may be satisfied through inclusion of the specified information in any document which is required by the qualifying entity's other Federal or State regulator to be routinely furnished to participants or, if no such document is required to be routinely furnished, through disclosure in any instrument that is required by the other regulator to establish the entity's investment policies and objectives and which is required by such other regulator to be made available (but not specifically furnished) to the entity's participants.⁶⁹

5. *The Special Call Representation.* The fifth and final representation that the Commission proposed was that the qualifying entity "will submit to such special calls as the Commission shall make of it to demonstrate compliance" with the requirements for regulatory relief specified in § 4.5. In its proposal the Commission explained the reason for this representation as follows:

⁶⁶ The Commission notes that certain qualifying entities—e.g., registered investment companies—are required by their other regulators to make disclosures directly to their participants but that other qualifying entities—e.g., a commingled trust fund of a federally regulated bank—may not be subject to any such direct disclosure requirement. The Commission intends that those other entities may satisfy this representation by indirect disclosure. For example, in the case of a bank commingled trust fund that intends to trade commodity interests on behalf of the various trust accounts comprising the commingled fund, the bank only needs to make the disclosure representation to the trustee of each underlying trust account.

⁶⁷ Section 190.01(x), 17 CFR 190.01(x) (1984), provides that "in-the-money" means:

(1) With respect to a call option, the amount by which the value of the physical commodity or the contract for sale of a commodity for future delivery which is the subject of the option exceeds the strike price of the option; and

(2) With respect to a put option, the amount by which the value of the physical commodity or the contract for sale of a commodity for future delivery which is the subject of the option is exceeded by the strike price of the option.

⁶⁸ Although the higher margin levels were not required to establish the qualifying entity's position in the example, they nevertheless would represent an increase in the entity's initial margin level under the circumstances hypothesized.

⁶⁹ 49 FR 4778, 4782.

The Commission believes that it must be able to readily obtain such information as may be necessary to verify compliance with the terms and conditions of the exemption and would expect to make very limited use of this special call provision. Inasmuch as proposed § 4.5 would provide for exemption from the recordkeeping requirements of § 4.23, this provision would enable the Commission upon complaint to establish whether an entity operating under the exemption was in continued compliance with the exemption criteria. It may also help the Commission to further refine the hedging or other criteria required by the exemption or to expand such criteria by rendering data on commodity interest activity by such entities generally accessible.⁷⁰

Here also, in light of the comments received, the Commission has adopted this representation essentially in the form as proposed. Section 4.5(c)(2)(v). Moreover, in the absence of any comments received, the Commission has adopted as proposed a delegation to the Director of the Division of Trading and Markets, and to his or her designee, "all functions reserved to the Commission" under this representation. Section 140.93(a)(5).

In general, the persons commenting on the special call representation sought clarification on the nature and the manner of presentation of the information subject to such special calls. They argued that this representation should not be interpreted so as to require retroactive creation of data or to subject an entity to surprise inspections. In response to those concerns, and pursuant to the intent of the Committee Report, the Commission wishes to make clear that it does not intend to administer the special call representation in any such burdensome or onerous manner. Rather, the Commission intends that the information it would require pursuant to a special call basically would be information that the qualifying entity's other Federal or State regulator would already be requiring it to keep—e.g., data concerning the execution dates, execution prices and current values of its cash market and commodity interest positions. Moreover, as is now expressly stated in the rule, a special call would be strictly limited to documenting compliance with the information and representations on operating criteria that the notice of eligibility must contain. Therefore, the Commission believes that compliance with a special call should pose little, if any, inconvenience or disruption to the conduct of the entity's operations.

D. Termination of an Exclusion

The Commission proposed that previously effective relief from regulation as a CPO would immediately cease to be effective upon the ineligibility of the person as to whom the relief was effective or the entity for which it was effective for inclusion in paragraph (a) or (b), respectively, or upon the failure of the entity to be operated in the manner specified in paragraph (c)(2).⁷¹ The Commission also proposed to terminate such previously effective relief if it determined that: (1) The notice of eligibility was inaccurate or incomplete; (2) the person or qualifying entity thereof possessed other attributes or features which would warrant regulation as a CPO; or (3) the continuance of the relief would be contrary to the public interest.

The commenters generally supported the provision on immediate termination for specific grounds. They took issue, however, with such discretionary termination authority in the Commission as the proposal would have provided with respect to otherwise facially qualifying entities. They generally contended that such authority was too broad and too vague and, therefore, that it could run afoul of the Commission's intention in proposing § 4.5 by stripping the rule of reliable certainty.

Based upon its evaluation of those comments, and its existing enforcement authority under the Act,⁷² the Commission has determined not to adopt this portion of its termination proposal. Thus, the final rule includes only the "immediate" portion of the proposal—i.e., that an exclusion effective under § 4.5 will cease to be effective upon any change which would render the person or the qualifying entity ineligible for relief under the rule or either the representations on operating criteria inaccurate or the continuation of such representations false or misleading. Section 4.5(e). The Commission emphasizes, however, that the rule as adopted is in no way intended to preclude the Commission from exercising its enforcement authority for a violation of § 4.5—or any section of the Act or any other regulation thereunder.

⁷⁰ The Commission emphasized, however, that failure to provide a supplemental notice of this information under paragraph (d) would not affect the fact that the exemption had ceased and, conversely, that the providing of this information in a supplemental notice would not affect the fact that the exemption had ceased. 49 FR 4778, 4783.

⁷¹ See, e.g., Section 4m(1) of the Act.

II. Other Rules.

A. Section 4.13(b)(1): The Filing of a Statement by Exempt CPOs

Section 4.13 exempts the operators of essentially family, club and small pools from registration as a CPO.⁷³ Under paragraph (b)(1) of this rule, a person who qualifies for and operates pursuant to such exemption must deliver a prescribed statement to each prospective participant in its pool. This statement essentially advises the prospective participant that the CPO is not registered as such with the Commission and therefore that the CPO is not required to comply with the disclosure and reporting requirements applicable to registered CPOs under §§ 4.21 and 4.22, respectively. The statement must also describe the exemption pursuant to which the CPO is not registered.

In the preamble accompanying its proposal the Commission noted that § 4.13(b)(1) did not require that this prescribed statement be filed with the Commission. Because it is critical to the Commission's oversight of the operations and activities of CPOs to know the identities of all persons who are acting as a CPO, the Commission proposed to amend § 4.13(b)(1) to require that the statement specified therein be filed with the Commission within seven business days after the date the statement was first delivered to a prospective participant. The Commission emphasized that this proposal was in no way intended to affect who is eligible for exemption from registration as a CPO under § 4.13 or to

⁷² Specifically, § 4.13(a) provides in pertinent part: A person is not required to register under the Act as a commodity pool operator if:

- (i) It does not receive any compensation or other payment, directly or indirectly, for operating the pool, except reimbursement for the ordinary administrative expenses of operating the pool;
- (ii) It operates only one commodity pool at any time;
- (iii) It is not otherwise required to register with the Commission and is not a business affiliate of any person required to register with the Commission; and
- (iv) Neither the person nor any other person involved with the pool does any advertising in connection with the pool (for purposes of this section, advertising includes the systematic solicitation of prospective participants by telephone or seminar prospective participants by telephone or seminar presentation); or
- (2)(i) The total gross capital contributions it receives for units of participation in all of the pools that it operates or that it intends to operate do not in the aggregate exceed \$200,000; and
- (ii) None of the pools operated by it has more than 15 participants at any time.

Compare § 4.5, which makes available an exclusion from the CPO definition for the "otherwise regulated" persons specified in the rule.

delay the effectiveness of any such exemption.⁷⁴

The commenters generally supported this proposed amendment to § 4.13(b)(1). Accordingly, subject to two exceptions discussed below, the Commission has adopted the amendment as proposed.

One commenter recommended that the statement be required to be filed not later than the date that the trading activity of the pool for which the statement is required commences. According to that commenter, many CPOs who are exempt from registration under § 4.13 are not familiar with this requirement but many FCMs (voluntarily) require proof that such a statement has been furnished to the pool's participants. The commenter thus reasoned that its recommendation would further compliance with the filing requirement. The Commission finds this recommendation to be useful, and has adopted in the rule a requirement that the statement must be filed "by the earlier of seven business days after the date the statement is first delivered to a prospective participant and the date upon which the pool commences trading commodity interests." Section 4.13(b)(1)(iv). Also, for the reasons provided earlier in this Federal Register release, the Commission has adopted in the final rule a requirement that the statement must be filed with the National Futures Association, at the address specified in the rule. Section 4.13(b)(1)(iv)(B).

B. Section 4.15: Continued Applicability of Antifraud Section

The Commission also proposed to amend § 4.15 such that it would no longer subject persons exempt from registration as a CPO (or as a CTA) to the provisions of section 14 of the Act,⁷⁵ which essentially subjects persons who are registered with the Commission to suit in reparations. The Commission explained that this proposal was in furtherance of proposed § 4.5.⁷⁶ Thus, the proposed amendment to § 4.15 would have affected persons proposed to be exempted from regulation as a CPO under § 4.5 and persons (currently) exempt from registration as a CPO under existing § 4.13. The Commission did not receive any specific comments on this proposal.

While § 4.5 as adopted makes an exclusion from the CPO definition

available to such persons and therefore the provisions of Section 14 inapplicable to such persons as to whom such exclusion is effective, in light of the amendment to Section 14 made by the 1982 Act,⁷⁷ the Commission has determined to adopt as proposed its amendment to § 4.15. The Commission emphasizes, however, that neither the proposed nor final amendment disturbs the other provisions of § 4.15—i.e., that "section 40 of the Act shall apply to any person even though such person is exempt from registration under this Part 4, and it shall continue to be unlawful for any such person to violate section 40 of the Act." Thus, § 4.15 as amended retains within the scope of Section 40 persons who are within the CPO definition but who are exempt from registration as a CPO under § 4.13.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁷⁸ requires that agencies, in proposing rules, consider the impact of those rules on small business. As the Commission noted in the preamble to the proposed rules,⁷⁹ it already had established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.⁸⁰

As the Commission also noted, those definitions do not address the persons and qualifying entities set forth in proposed § 4.5 because, by the very nature of the proposal, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission.⁸¹ Assuming, *arguendo*, that such persons and entities would be "small entities" for purposes of the RFA, the Commission expressed its belief that proposed § 4.5 would not have a significant economic impact on them because it merely would require the filing of a notice with the Commission, the documentation for which should be pre-existing. Moreover, the Commission

noted that the proposal would relieve those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.⁸² Thus, the Commission concluded that no economic analysis of proposed § 4.5 was required.

With respect to § 4.13(b)(1), the Commission explained that it previously had determined that registered CPOs are not small entities for purposes of the RFA⁸³ and, therefore, that an economic analysis of § 4.13(b)(1)—which would apply to persons exempt from registration as a CPO—might be required. The Commission similarly expressed its belief that the proposal should not have a significant economic impact on such exempt CPOs because it would merely require those CPOs to provide the Commission with an already required statement of exemption.

In certifying pursuant to Section 3(a) of the RFA that these two proposals, if adopted, would not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any CPO who believed that the proposals, if adopted, would have a significant economic impact on their activities.⁸⁴ No such comments were received on the proposed amendment to § 4.13(b)(1).

Such comments were, however, received on proposed § 4.5 and, in particular, on the operating criteria proposed in the rule. In response, and as is discussed more fully above, the Commission notes that when compared to the proposed rule, the final rule: (1) makes available an exclusion from the CPO definition, not merely an exemption from regulation as a CPO as was proposed; (2) makes the exclusion available to more persons; and (3) contains various provisions—and by this Federal Register release numerous interpretations thereof—responsive to the concerns of the commenters. With respect to the operating criteria in particular, the Commission has adopted in the final rule certain provisions—and by this release interpretations thereof—intended to relieve the burdens the

⁷⁴ In this regard, the Commission does not intend hereafter to exercise jurisdiction in its reparations program over persons exempt from CTA registration under section 4m(1) of the Act. This view is consistent with the thrust of the 1982 amendments to the Act. See Pub. L. No. 97-444, § 231, 96 Stat. 2319-20 (1983), which generally narrowed the scope of Section 14 jurisdiction to persons registered with the Commission.

⁷⁵ 5 U.S.C. 601 *et seq.* (1982).

⁷⁶ See 49 FR 4778, 4787 for the Commission's discussion of the application of the RFA to proposed §§ 4.5 and 4.13(b)(1).

⁷⁷ 47 FR 18618-21 (April 30, 1982).

⁷⁸ For example, a registered investment company is regulated by the Securities and Exchange Commission.

⁸² As is explained more fully above, § 4.5 as adopted makes even greater relief available to such persons and entities.

⁸³ 47 FR 18619-20.

⁸⁴ With respect to the other two rules it is adopting today, the Commission believes that a specific RFA analysis is unnecessary. This is because § 140.93(a)(5) delegates to the Director of the Division of Trading and Markets certain authority set forth in § 4.5 and thus is covered under the RFA analysis of that rule, and the amendment to § 4.15 excludes from suit in reparations CPOs (and CTAs) who are not registered with the Commission.

⁷⁴ 49 FR 4778, 4784. The Commission also noted that while § 4.14 exempts certain persons from registration as a CTA, that rule does not, however, require the delivery of any prescribed statement such as that specified in § 4.13(b)(1) for CPOs. *Id.* n. 30.

⁷⁵ 5 U.S.C. 16 (1982).

⁷⁶ See 49 FR 4778, 4783.

commenters perceived on the availability of § 4.5—e.g., §§ 4.5(c)(2) (i) and (ii). As is stated above, § 4.5 is not intended to interfere with the business activities of the persons and qualifying entities specified therein but to provide relief from certain regulation that otherwise would be required as a result of their use of the commodity interest markets. Thus, the Commission here repeats that its intent in adopting § 4.5 is to distinguish between when certain entities should be treated as commodity pools and their operators as CPOs—and not to establish what should be regarded as prudent trading strategies.

B. Section 15 of the Act

Section 15 of the Act⁸⁵ requires the Commission to—

Take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation. * * *

The Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Act. To the extent the rules adopted herein raise competitive concerns, the Commission has determined that such rules are necessary and appropriate. This is particularly true in light of the nature and extent of regulatory relief available under § 4.5. Moreover, in adopting § 4.5 the Commission specifically has taken into account the differences in the structures of eligible persons' and qualifying entities' "other regulators." See, e.g., § 4.5(c)(2)(iv). As for other persons and entities, the Commission notes that, as is discussed above, while it closely has followed the Committee Report in specifying the persons and entities covered under § 4.5 it intends that the staff will continue to issue interpretations of the rule—such that, under appropriate circumstances, relief from regulation as a CPO may be afforded to such other persons with respect to such other entities.

C. Paperwork Reduction Act

The Commission previously has submitted pertinent portions of these rules to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.⁸⁶

D. Effective Dates

The Administrative Procedure Act generally requires that rules promulgated by an agency may not be made effective less than 30 days after publication except for, among other things, "a substantive rule which grants or recognizes an exemption or relieves a restriction" or "for good cause."⁸⁷ Inasmuch as § 4.5 and the amendment to § 4.15 come within the first exception, the Commission is making these rules effective upon the date of publication of this Federal Register release. As is explained more fully above, however, by this Federal Register release the Commission also, in effect, is providing a 60 day "no-action" period for persons to file the requisite notice of eligibility necessary to claim the relief available under § 4.5. Since § 140.93(a)(5) necessarily flows from the adoption of § 4.5, the Commission finds that good cause exists similarly to make this rule effective upon publication. The amendment to § 4.13(b)(1) does not come within any such exception and, accordingly, it is to be effective 30 days after publication.

List of Subjects

17 CFR Part 4

Commodity pool operators,
Commodity trading advisors,
Commodity futures.

17 CFR Part 140

Authority delegations (Government agencies), Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4k, 4l, 4m, 4n, 4o, 8a and 14 thereof, 7 U.S.C. 2, 6k, 6l, 6m, 6n, 6o, 12a and 18 (1982), and in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. Section 4.5 is added to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term "commodity pool operator" with respect to the operation

of a qualifying entity specified in paragraph (b) of this section:

(1) An investment company registered as such under the Investment Company Act of 1940;

(2) An insurance company subject to regulation by any State;

(3) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States; and

(4) A trustee or named fiduciary of a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974; *Provided, however*, That for purposes of this § 4.5 the following pension plans shall not be construed to be pools:

(i) A noncontributory plan, whether defined benefit or defined contribution, covered under Title I of the Employee Retirement Income Security Act of 1974;

(ii) A contributory defined benefit plan covered under Title IV of the Employee Retirement Income Security Act of 1974; *Provided, however*, That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts; and

(iii) A plan defined as a governmental plan in Section 3(32) of Title I of the Employee Retirement Income Security Act of 1974.

(b) For the purposes of this section, the term "qualifying entity" means:

(1) With respect to any person specified in paragraph (a)(1) of this section, an investment company registered as such under the Investment Company Act of 1940;

(2) With respect to any person specified in paragraph (a)(2) of this section, a separate account established and maintained or offered by an insurance company pursuant to the laws of any State or territory of the United States, under which income gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account, without regard to other income, gains, or losses of the insurance company;

(3) With respect to any person specified in paragraph (a)(3) of this section, the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment authority; and

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to Title I of the Employee Retirement

⁸⁵ 7 U.S.C. 19 (1982).

⁸⁶ 44 U.S.C. Chapter 35 (1982). The control number for Part 4 is 3038-0005.

⁸⁷ 5 U.S.C. 553(d) (1) and (3) (1982), respectively.

Income Security Act of 1974; *Provided, however*, That such entity will be operated in the manner specified in paragraph (c)(2) of this section.

(c) Any person who desires to claim the exclusion provided by this section shall file with the Commission a notice of eligibility.

(1) The notice of eligibility must contain the following information:

- (i) The name of such person;
- (ii) The applicable subparagraph of paragraph (a) of this section pursuant to which such person is claiming exclusion;
- (iii) The name of the qualifying entity which such person intends to operate pursuant to the exclusion; and
- (iv) The applicable subparagraph of section paragraph (b) of this pursuant to which such entity is a qualifying entity.

(2) The notice of eligibility must contain representations that such person will operate the qualifying entity specified therein in a manner such that the qualifying entity:

- (i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1); *Provided, however*, That in the alternative, with respect to each long position in a commodity future or commodity option contract which will be used as part of a portfolio management strategy and which is incidental to a qualifying entity's activities in the underlying cash market but would not come within the meaning and intent of § 1.3(z)(1), as a substitute for compliance with this paragraph (c)(2)(i) a qualifying entity may represent that the underlying commodity value of such contract at all times will not exceed the sum of:

(A) Cash set aside in an identifiable manner, or short-term United States debt obligations or other United States dollar-denominated high quality short-term money market instruments so set aside, plus any funds deposited as margin on such contract;

(B) Cash proceeds from existing investments due in 90 days; and

(C) Accrued profits on such contract held at the futures commission merchant.

- (ii) Will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 5 percent of the fair market value of the entity's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however*, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 5%;

(iii) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets;

(iv) Will disclose in writing to each prospective participant the purpose of and the limitations on the scope of the commodity futures and commodity options trading in which the entity intends to engage; and

(v) Will submit to such special calls as the Commission may make to require the qualifying entity to demonstrate compliance with the provisions of this § 4.5(c);

Provided, however, That the making of such representations shall not be deemed a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which such person or qualifying entity is subject.

(3) The notice of eligibility must be filed with the Commission prior to the date upon which such person intends to operate the qualifying entity pursuant to the exclusion provided by this section.

(4) The notice of eligibility shall be effective upon filing.

(d)(1) Each person who has claimed exclusion hereunder must, in the event that any of the information contained or representations made in the notice of eligibility becomes inaccurate or incomplete, file a supplemental notice with the Commission to that effect which, if applicable, includes such amendments as may be necessary to render the notice of eligibility accurate and complete.

(2) The supplemental notice required by paragraph (d)(1) of this section shall be filed within fifteen business days after the occurrence of such event.

(e) An exclusion claimed hereunder shall cease to be effective upon any change which would render:

(1) A person as to whom such exclusion has been claimed ineligible under paragraph (a) of this section;

(2) The entity for which such exclusion has been claimed ineligible under paragraph (b) of this section; or

(3) Either the representations made pursuant to paragraph (c)(2) of this section inaccurate or the continuation of such representations false or misleading.

(f) Any notice required to be filed hereunder must be:

(1) In writing;

(2) Signed by a duly authorized representative of a person specified in paragraph (a) of this section;

(3) Filed with the Commission at the address specified in § 4.2; and

(4) Filed with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

2. Section 4.13 is amended by revising paragraph (b)(1) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

(b)(1) No person who is exempt from registration as a commodity pool operator under paragraph (a)(1) or (a)(2) of this section and who is not registered as such pursuant to that exemption may, directly or indirectly, solicit, accept or receive funds, securities or other property from any prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the person delivers or causes to be delivered to the prospective participant a written statement that must disclose this fact as follows: "The commodity pool operator of this pool is not required to register, and has not registered, with the Commodity Futures Trading Commission. Therefore, unlike a registered commodity pool operator, this commodity pool operator is not required by the Commission to furnish a Disclosure Document, periodic Account Statements, and an Annual Report to participants in the pool." The person must:

(i) Describe in the statement the exemption pursuant to which it is not registered as a commodity pool operator;

(ii) Provide its name, main business address and main business telephone number on the statement;

(iii) Manually sign the statement as follows: if such person is a corporation, by the chief executive officer, chief financial officer or counterpart thereto; if a partnership, by a general partner; and if a sole proprietorship, by the sole proprietor; and

(iv) By the earlier of seven business days after the date the statement is first delivered to a prospective participant and the date upon which the pool commences trading in commodity interests:

(A) File two copies of the statement with the Commission at the address specified in § 4.2; and

(B) File one copy of the statement with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

3. Section 4.15 is revised to read as follows:

§ 4.15 Continued applicability of antifraud section.

The provisions of section 40 of the Act shall apply to any person even though such person is exempt from registration under this Part 4, and it shall continue to be unlawful for any such person to violate section 40 of the Act.

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

4. Section 140.93 is amended by adding paragraph (a)(5) to read as follows:

§ 140.93 Delegation of Authority to the Director of the Division of Trading and Markets.

(a) * * *

(5) All functions reserved to the Commission in § 4.5(c)(2)(v) of this Chapter.

Issued in Washington, D.C., on April 17, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-9730 Filed 4-22-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 19**

[T.D. 85-72]

Customs Regulations Amendment Relating to the Relocation or Alteration of Container Stations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide a procedure for the relocation or alteration of an approved container station and the payment of an appropriate fee to Customs to reflect the services provided. The change is necessary to conform the regulations concerning container stations to those concerning bonded warehouses, wherein relocation or alteration is provided for, and to recover Customs costs for services rendered. The fee requirement is necessary because of the policy that Federal agencies charge appropriate fees for providing special benefits to identifiable recipients above and beyond those which accrue to the general public.

EFFECTIVE DATE: May 23, 1985.

FOR FURTHER INFORMATION CONTACT: James Kenny, Accounting Division, (202-

566-2021), and Donald Thompson, Office of Cargo Enforcement and Facilitation, (202-566-5354), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:**Background**

Container stations are secured areas within the U.S. into which containers of imported merchandise may be moved for the purpose of opening the container and delivering the contents before an entry is filed with Customs or duty is paid. A container station serves as a central location at a port for processing containerized merchandise which otherwise could not be handled timely at the dock, wharf, pier, or bonded carrier's terminal.

Sections 19.40 through 19.49, Customs Regulations (19 CFR 19.40-19.49), set forth the procedures for the establishment and use of container stations. To establish a container station under § 19.40, Customs Regulations, an application must be filed with the district director. Before the application may be approved, Customs must: (1) Determine that the application is in proper form; (2) survey the premises to determine that all physical requirements are met; (3) perform a background investigation of the applicant and the applicant's officers and employees; (4) prepare a report of that investigation; and (5) review the application, survey, and background investigation report, and prepare a response to the applicant.

By T.D. 83-56, published in the Federal Register on March 9, 1983 (48 FR 9853), Customs amended § 19.40, to provide that a fee, calculated in accordance with § 24.17(d), Customs Regulations (19 CFR 24.17(d)), must accompany an application to establish a container station. The fee set forth in that document was \$852. By T.D. 84-45, published in the Federal Register on February 21, 1984 (49 FR 6433), the fee was raised to \$879.00. However, by T.D. 85-70, published in the Federal Register on April 17, 1985 (50 FR 15271), effective April 17, 1985, the fee was raised to \$1021. The fee is based upon the amount of time the average service requires of the Customs officers performing the service. It is in accord with the User Charges Statute (31 U.S.C. 9701), under which a Federal agency may charge appropriate fees to recover the costs of services provided by that agency. The fee is charged for providing special benefits to identifiable recipients above and beyond those which accrue to the general public.

Although § 19.40 provides for the establishment of a container station and the collection of an establishment fee,

the present regulations do not make any provision for the relocation or alteration of a container station, as they do for a bonded warehouse. Section 19.3(a), Customs Regulations (19 CFR 19.3(a)), provides procedures for the relocation or alteration of bonded warehouses.

Accordingly, on October 3, 1984, a notice was published in the Federal Register (49 FR 39077), proposing to amend § 19.40 to provide not only for the establishment of a container station, upon payment of a fee, but also for the relocation or alteration of a container station within the same Customs district, also upon payment of a fee. The fee proposed for relocation and alteration was \$382, which is equivalent to the current fee prescribed by T.D. 84-45, to reimburse Customs for services relating to the relocation or alteration of a bonded warehouse. The services provided by Customs in altering or relocating a container station are essentially the same as those provided in altering or relocating a bonded warehouse. By T.D. 85-70, published in the Federal Register on April 17, 1985 (50 FR 15271), effective April 17, 1985, the fee for altering or relocating a bonded warehouse was raised to \$442. Therefore, the fee for altering or relocating a container station also will be \$442.

As with the fee charged for establishing a container station, which was included in T.D. 83-56, the fee for relocating or altering a container station will be revised periodically to reflect increased costs for Customs services. A schedule listing the revised fees to be charged by Customs for relocating or altering a container station, as well as establishing a container station, will be published in the Federal Register and Customs Bulletin when changed. The fee schedule will remain in effect until changed.

Interested parties were given until December 3, 1984, to submit written comments on the proposal. However, no comments were received. Therefore, except for increasing the fee, the amendment is adopted as proposed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the amendment set forth in this document will not have a significant

economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 19

Customs duties and inspection, Imports, Freight, Container stations.

Amendment to the Regulations

Part 19, Customs Regulations (19 CFR Part 19), is amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Section 19.40 is amended in the following manner:

§ 19.40 Establishment, relocation or alteration of container stations.

1. The section heading is revised to read as set forth above.
2. The first sentence of paragraph (a) is amended by removing reference to "paragraph (b)" and inserting, in its place, reference to "paragraph (c)".
3. Paragraphs (b)(1) and (b)(2) are redesignated as paragraphs (c)(1) and (c)(2), and a new paragraph (b) is added to read as follows:

(b) Alterations to or relocation of a container station within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a container station shall be accompanied by the fee required by paragraph (c) of this section.

4. The text of redesignated paragraph (c)(1) is revised to read as follows:

(c)(1) Customs shall charge a fee to establish, relocate or alter a container station, and publish a general notice in the Federal Register and Customs Bulletin setting forth a fee schedule, to be revised periodically to reflect

increased costs, to establish, relocate or alter the container station. The published revised fee schedule shall remain in effect until changed.

(R.S. 251, as amended, 77A, Stat. 14, sec. 499, 46 Stat. 728, sec. 624, 46 Stat. 759 (19 U.S.C. 86, 1202 (Gen. Hdnts. 1-6, 11, 12, Tariff Schedules of the United States) 1499, 1624))

Alfred R. DeAngelus,

Acting Commissioner of Customs.

Approved March 29, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-9733 Filed 4-22-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Amprolium, Ethopabate, and Virginiamycin

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by SmithKline Animal Health Products, providing for use of a virginiamycin premix with an amprolium plus ethopabate premix to manufacture complete broiler chicken feeds used as an aid in the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed NADA 122-822 providing for use of premixes containing either 5, 10, 20, 50, or 225 grams of virginiamycin per pound with a premix containing 25 percent (113.5 grams per pound) amprolium and 8 percent (36.3 grams per pound) ethopabate to manufacture a complete

feed containing 15 or 5 to 15 grams of virginiamycin per ton of feed, 0.0125 percent (113.5 grams per ton) amprolium, and 0.004 percent (36.3 grams per ton) ethopabate for broiler chickens. The medicated feed is used as an aid in the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency with virginiamycin at 15 grams per ton, or for increased rate of weight gain only with virginiamycin 5 to 15 grams per ton. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. In § 558.58 by adding a new entry to the table in paragraph (e)(1), item (iii), to read as follows:

§ 558.58 Amprolium and ethopabate.

(e) * * *
(1) * * *

Amprolium and ethopabate in grams per ton

Combination in grams per ton

Indications for use

Limitations

Sponsor

(i) Amprolium 113.5 (0.0125%) and ethopabate 36.3 (0.004%).

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Virginiamycin, 15	Broiler chickens, as an aid in the prevention of coccidiosis where severe exposure to <i>Eimeria acervulina</i> , <i>E. brunetti</i> , and <i>E. maxima</i> is likely to occur, for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration, do not feed to laying hens, not for chickens over 16 weeks of age, as sole source of amprolium, amprolium and ethopabate as provided by 000006 in § 510.600(c), virginiamycin as provided by 000007.	00007
	Virginiamycin, 5 to 15	Broiler chickens, as an aid in the prevention of coccidiosis where severe exposure to <i>Eimeria acervulina</i> , <i>E. brunetti</i> , and <i>E. maxima</i> is likely to occur, for increased rate of weight gain.	do	

2. In § 558.635 by adding new paragraph (f)(3)(iv) to read as follows:

§ 558.635 Virginiamycin.

(f) * * *

(3) * * *

(iv) Amprolium and ethopabate as in § 558.58.

Effective date. April 23, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 16, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-9687 Filed 4-22-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 250 and 275

[T.D. ATF-203]

Definition of Products Manufactured in Puerto Rico and the Virgin Islands

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision (final rule).

SUMMARY: This final rule amends ATF regulations to implement Sections 2681 and 2682 of Pub. L. 98-369 (Deficit Reduction Act of 1984), which was signed by President Reagan on July 18, 1984. Section 2681 eliminates the Puerto Rican redistillation program by clarifying the definition of articles containing distilled spirits that are produced in Puerto Rico or the Virgin Islands. It also defines the criteria for products other than distilled spirits to be considered as produced in Puerto Rico. Section 2682 limits the amount of excise tax that will be paid to Puerto Rico and the Virgin Islands for their distilled spirits to the lesser of \$10.50 or the tax imposed by law, on each proof gallon.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Susan McCarron or Robert White.

Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

Under Section 7652 (a) and (b) of the Internal Revenue Code of 1954 (as amended), merchandise manufactured in Puerto Rico and the Virgin Islands, and brought into the United States (U.S.), is subject to an excise tax equal to the tax imposed in the United States on similar merchandise of domestic manufacture. This section further provides for the taxes collected on merchandise (including distilled spirits and tobacco products) made in Puerto Rico and the Virgin Islands, and transported to the U.S. (less certain amounts), to be deposited in the Treasury of the possession which manufactured the merchandise.

A longstanding administrative interpretation of 26 U.S.C. 7652(a) and (b) by ATF provides that an article may be considered "produced" in Puerto Rico or the Virgin Islands if it is shipped to Puerto Rico or the Virgin Islands and undergoes a substantial change in identity as a result of treatment in Puerto Rico or the Virgin Islands.

In 1982, the Puerto Rican government (through their Economic Development Administration—EDA) began subsidizing a redistillation program. Under the terms of the program, distilled spirits originally produced in the U.S. were shipped to distilleries in Puerto Rico for redistillation and subsequent shipment back to the U.S. The excise taxes would be deposited into the Treasury of Puerto Rico, provided the redistilled spirits met the substantial change requirement.

In an attempt to give stronger guidelines to the redistillation program, ATF issued a ruling (ATF Rul. 83-4, A.T.F., Q.B. 1983-2, 65), effective May 9, 1983, which established restrictive "substantial change" criteria for spirits involved in the program. The domestic distilled spirits plants involved in

transporting spirits to Puerto Rico for redistillation had little operational difficulty in conforming to these criteria; therefore, the level of activity in this program did not decrease.

This redistillation program began receiving Congressional interest in mid-1983. Congress became concerned about the revenue impact this program had to the U.S. Treasury, as well as the competitive and economic effect of the program on U.S. distilled spirits plants that were not involved in the program. As a result, Public Law 98-369 includes a provision to halt the redistillation program.

Explanation of Pub. L. 98-369

On July 18, 1984, President Reagan signed the Deficit Reduction Act of 1984, Pub. L. 98-369. Section 2681 of the Act eliminates the Puerto Rican redistillation program by clarifying the definition of articles containing distilled spirits that are produced in Puerto Rico (or the Virgin Islands). Although the Virgin Islands was not involved in a redistillation program, it is also affected by certain amendments to 26 U.S.C. 7652 made by Sections 2681 and 2682 of this Act.

Section 2681 amends 26 U.S.C. 7652 by requiring that payments of excise taxes on articles containing distilled spirits will be permitted only if at least 92 percent of the alcoholic content of such articles is rum. This requirement applies to spirits coming into the U.S. from either Puerto Rico or the Virgin Islands.

In addition, an article not containing distilled spirits (e.g., wine, beer, and tobacco products) will not be considered as produced in Puerto Rico unless the sum of the cost or value of the materials produced in Puerto Rico, plus the direct costs of processing operations in Puerto Rico, equals or exceeds 50 percent of the value of the article at the time it is brought into the U.S. The term "direct costs of processing operations" is defined in section 213 of the Caribbean Basin Economic Recovery Act (Pub. L. 98-67) as:

(a) All actual labor costs involved in the growth, production, manufacture, or

assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; and

(b) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Puerto Rico and the Virgin Islands are prohibited by section 2681 of the Act from providing any federal excise tax subsidy for any article not containing distilled spirits produced by them. Subsidies may be provided for any article containing distilled spirits that meets the 92 percent criteria. A "federal excise tax subsidy" is defined as a subsidy which is of a kind different from, or in an amount per value or volume of production greater than, subsidies provided by Puerto Rico or the Virgin Islands to industries that produce articles not subject to excise tax.

Section 2682 of Pub. L. 98-369, amends 26 U.S.C. 7652 by limiting the amount of excise tax that will be paid to Puerto Rico and the Virgin Islands for distilled spirits to the lesser of \$10.50, or the tax imposed by 26 U.S.C. 5001(a)(1), on each proof gallon. This limitation also applies to the taxes these areas receive for all rum imported into the U.S., as provided in the Caribbean Basin Economic Recovery Act.

Special Rules of Section 2681

Section 2681 of the Act is effective for articles brought into the U.S. as of March 1, 1984; however, allowances are made for a phase-out period for articles containing distilled spirits that extends to January 1, 1985.

The amount of excise taxes that may be transferred to Puerto Rico for redistilled spirits and cane neutral spirits coming into the U.S. between July 1, 1983 and June 30, 1984, was limited to \$130 million. The limitation on excise taxes to Puerto Rico for redistilled spirits brought into the U.S. from July 1, 1984 to January 1, 1985, is \$75 million.

A further provision of Section 2681 allows any U.S. distiller involved in the redistillation program prior to March 1, 1984, to receive up to \$1.5 million in incentive payments from Puerto Rico during the period July 1, 1984 to January 1, 1985. Certain penalties are imposed for any distiller that exceeds the \$1.5 million limitation. These incentive payments include any payment made directly or indirectly by Puerto Rico to any U.S. distiller as an incentive for participation in the redistillation program, excluding certain transportation costs.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) do not apply to this final rule because no notice of proposed rulemaking is required by 5 U.S.C. 553(b) or any other statute.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this rule because no requirement to collect information is imposed.

Drafting Information

The authors of this document are Susan McCarron and Robert White of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

There is an immediate need for this information to be distributed to the distilled spirits industry to implement certain provisions of the Deficit Reduction Act of 1984 which were effective on March 1, 1984. Consequently, it is found that it would be impracticable and unnecessary, within the meaning of 5 U.S.C. 553(b), to provide a notice of proposed rulemaking prior to the issuance of any regulations. For the same reason it is found that these regulations are exempt from compliance with the 30-day effective date limitation of 5 U.S.C. 553(d). Accordingly, these regulations shall become effective on the date of their publication in the *Federal Register*.

List of Subjects

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer,

Customs duties and inspection, Electronic funds transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended). Accordingly, Title 27 of the Code of Federal Regulations is amended as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Paragraph 1. Section 250.1 is amended to reflect the revision of paragraphs (d) and (e) necessitated by 26 U.S.C. 7652(j). As amended, § 250.1 (d) and (e) reads as follows:

§ 250.1 Alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

* * * * *

(d) The deposit of the distilled spirits excise taxes, limited to the lesser of \$10.50 or the rate in section 5001(a)(1) per proof gallon, into the Treasuries of Puerto Rico and the Virgin Islands on all articles containing distilled spirits as defined in section 7652, produced by those two U.S. possessions, and transported into the United States (less certain amounts); and

(e) The deposit of the distilled spirits excise taxes, limited to the lesser of \$10.50 or the rate in section 5001(a)(1) per proof gallon, into the Treasuries of Puerto Rico and the Virgin Islands on all rum imported into the United States (including rum from possessions other than Puerto Rico and the Virgin Islands), less certain amounts.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

Par. 2. Subpart Ca is revised to read as follows:

Subpart Ca—Rum Imported Into the United States From Areas Other Than Puerto Rico and the Virgin Islands

§ 250.30 Excise taxes.

Distilled spirits excise taxes, less the estimated amounts necessary for payment of refunds and drawbacks, collected on all rum imported into the United States (including rum from possessions other than Puerto Rico and the Virgin Islands), will be deposited into the Treasuries of Puerto Rico and the Virgin Islands according to the formula described in § 250.31. The amount deposited into the Treasuries of Puerto Rico and the Virgin Islands shall be the lesser of \$10.50, or the rate imposed by 26 U.S.C. 5001(a)(1) (including adjustments to the effective tax rate under 26 U.S.C. 5010), on each proof gallon of rum imported into the United States.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

§ 250.31 Formula.

(a) The amount of excise taxes deposited in the Treasuries of Puerto Rico and the Virgin Islands on rum imported into the United States from other areas shall be deposited in proportion to the average amount of taxes that were collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands during the fiscal years 1980, 1981, and 1982. Accordingly, the Puerto Rican Treasury will receive 86.4 percent, and the Virgin Islands Treasury will receive 13.6 percent, of the amount deposited into these Treasuries for rum imported into the United States from areas other than Puerto Rico and the Virgin Islands.

(b) The method for transferring the excise tax amounts on rum imported from other countries into the Treasuries of Puerto Rico and the Virgin Islands shall be the same as the method used for transferring the excise tax amounts on distilled spirits brought into the United States from Puerto Rico, and deposited into that Treasury.

(Sec. 221, Pub. L. 98-67, 97 Stat. 369, as amended (26 U.S.C. 7652))

Par. 3. Section 250.35 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 250.35 Taxable status.

(b) The excise taxes collected on distilled spirits or articles containing distilled spirits shall be deposited into the Treasury of Puerto Rico only if at least 92 percent of the alcoholic content of such products is rum. The amount

deposited into the Treasury of Puerto Rico shall not exceed the lesser of \$10.50, or the rate imposed by 26 U.S.C. 5001(a)(1) (including adjustments to the effective tax rate under 26 U.S.C. 5010), on each proof gallon of such distilled spirits or articles containing distilled spirits coming into the United States or consumed on the island. Such excise tax deposits will be reduced by the estimated amount necessary for payment of refunds and drawbacks.

(c) Except for products described in 26 U.S.C. 7652(c), no excise taxes shall be deposited into the Treasury of Puerto Rico if an excise tax subsidy is provided by Puerto Rico that is of a kind different from, or in an amount per value or volume of production greater than, any subsidy offered by Puerto Rico to industries manufacturing products not subject to Federal excise tax.

(Sec. 2682, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 7652))

Par. 4. Section 250.200 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 250.200 Taxable status.

(b) The excise taxes collected on distilled spirits and articles containing distilled spirits shall be deposited into the Treasury of the Virgin Islands only if at least 92 percent of the alcoholic content of such product is rum. The amount deposited into the Treasury of the Virgin Islands shall not exceed the lesser of \$10.50, or the rate imposed by 26 U.S.C. 5001(a)(1) (including adjustments to the effective tax rate under 26 U.S.C. 5010), on each proof gallon of such distilled spirits or article containing distilled spirits coming into the United States. Such excise tax payments to the Treasury of the Virgin Islands will be reduced by one percent and the estimated amount of refunds or credits, and may be further reduced by certain amounts deposited to the U.S. Treasury as miscellaneous receipts. The moneys so transferred and paid over shall constitute a separate fund in the Treasury of the Virgin Islands, and may be expended as the Virgin Islands legislature may determine.

(c) Except for products described in 26 U.S.C. 7652(c), no excise taxes shall be deposited into the Treasury of the Virgin Islands if an excise tax subsidy is provided by the Virgin Islands that is of a kind different from, or in an amount per value or volume of production greater than, any subsidy offered by the Virgin Islands to industries

manufacturing products not subject to Federal excise tax.

(Sec. 2682, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 7652))

Par. 5. Section 250.92 is revised to read as follows:

§ 250.92 Subject to tax.

(a) Wine of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States on wine by 26 U.S.C. 5041.

(b) The excise taxes collected on wine of Puerto Rican manufacture shall be deposited in the Treasury of Puerto Rico only if the sum of the cost or value of the materials produced in Puerto Rico, plus the direct costs of processing operations performed in Puerto Rico, equals or exceeds 50 percent of the value of the wine when it is brought into the United States.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

Par. 6. Section 250.101 is revised to read as follows:

§ 250.101 Subject to tax.

(a) Beer of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale is subject to a tax equal to the internal revenue tax imposed on beer in the United States by 26 U.S.C. 5051.

(b) The excise taxes collected on beer of Puerto Rican manufacture shall be deposited in the Treasury of Puerto Rico only if the sum of the cost or value of the materials produced in Puerto Rico, plus the direct costs of processing operations performed in Puerto Rico, equals or exceeds 50 percent of the value of the beer when it is brought into the United States.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Par. 1. Section 275.101 is revised to read as follows:

§ 275.101 General.

(a) Cigars, cigarettes, and cigarette papers and tubes manufactured in Puerto Rico which are brought into the United States and withdrawn for consumption or sale are subject to the tax imposed by 26 U.S.C. 7652(a), at the rates set forth in 26 U.S.C. 5701.

(b) The excise taxes collected on cigars, cigarettes, and cigarette papers and tubes manufactured in Puerto Rico are covered into the Treasury of Puerto Rico. Cigars, cigarettes, and cigarette papers and tubes are considered as manufactured in Puerto Rico for purposes of 26 U.S.C. 7652(a)(3) if the sum of the cost or value of the materials produced in Puerto Rico, plus the direct costs of processing operations performed in Puerto Rico, equals or exceeds 50 percent of the value of the product when it is brought into the United States.

(c) The excise tax on cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture may be prepaid in Puerto Rico prior to shipment of such articles to the United States in accordance with § 275.105. In the case of cigars and cigarettes such tax may be paid in Puerto Rico on the basis of a semi-monthly return in accordance with the applicable provisions of this subpart.

(d) Cigars and cigarettes may be shipped to the United States and released from customs custody, without payment of excise tax, for transfer to the factory of a manufacturer of tobacco products under the bond of such manufacturer in accordance with § 275.135. Cigarette papers and tubes may be similarly shipped and released from customs custody for transfer to the factory of either a manufacturer of cigarette papers and tubes, or a manufacturer of tobacco products solely for use in the manufacture of cigarettes, under the bond of the manufacturer to whom such articles are released, in accordance with § 275.135.

(e) Cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture on which excise tax has not been paid or computed in Puerto Rico and which are not to be released from customs custody without payment of excise tax, under bond, shall not be withdrawn from customs custody until the excise tax has been paid in accordance with § 275.81.

1984 Stat. 907, as amended, 72 Stat. 1417, 1418, as amended (26 U.S.C. 7652, 5703, 5704))

Signed: February 12, 1985.

Stephen E. Higgins,
Director.

Approved: March 29, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

FR Doc. 85-9685 Filed 4-22-85; 8:45 am

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Approval of Permanent Program Amendment From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by West Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises certain requirements of the State's program for blaster training, examination and certification.

West Virginia submitted the proposed program amendment on November 20, 1984. OSM published a notice in the *Federal Register* on December 17, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended January 18, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it with one exception. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: James Blankenship, Acting Director, Charleston Field Office, Office of Surface, 603 Morris Street, Charleston, West Virginia 25301; Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

The West Virginia program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR

5915-5956). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the West Virginia program can be found in the January 21, 1981 *Federal Register*. (46 FR 5915).

II. Submission of Revisions

On January 12, 1984, West Virginia submitted statute and regulations and other material which would establish requirements for the training, examination and certification of blasters working in surface coal mining operations. These materials were later supplemented by additional information submitted by the State on June 18, 1984.

On September 20, 1984, the Director approved the State's proposed blaster program but required correction of three minor deficiencies (49 FR 36837-36840). These deficiencies related to the lack of the requirements of 30 CFR 850.12(b), 850.13(a)(2) and 850.15(b)(1)(ii) in the proposed State regulations. On November 20, 1984, the State submitted proposed regulations and a policy statement intended to resolve the above deficiencies.

On December 17, 1984, OSM published a notice in the *Federal Register* announcing receipt of the West Virginia amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 48943-48945). The public comment period ended January 16, 1985. An opportunity to request a public hearing was provided, but none was requested.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by West Virginia on November 20, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, with certain exceptions, as discussed below.

A. General

The West Virginia submission provides that the West Virginia Department of Mines, in accordance with Section 20-6-34 of the West Virginia Surface Coal Mining and Reclamation Act, will be responsible for the training, examination and certification of blasters within the State.

The program amendment approved by the Secretary on September 20, 1984, provided that mandatory blaster certification training as required by 30

CFR 850.13(b) could be accomplished by way of any of three methods. The first would be to attend the classroom training sponsored by the West Virginia Department of Mines and provided through the facilities of the State Vocational Education office as specified in the State's proposed regulations. The second method of satisfying the training provisions would be to conduct a self-study program using the "Study Guide for West Virginia Surface Mine Blasters." The third method would be to attend a certified blaster training session conducted by an explosives manufacturer. The applicant's certification would indicate on the application for the blaster certification exam which type of training he or she had received.

In the September 20 approval, the Director found that only the first method of training would satisfy the provisions of 30 CFR 850.13(b). The second option, self-study, could not be utilized until self-study training materials providing instruction in all areas required by 30 CFR 850.13(b) and a procedure to verify that the self-study had actually been conducted were developed. The third method of proposed training, manufacturer training, could not be accepted until procedures were developed by the State to verify that the training meets the requirements of 30 CFR 850.13(b) and the process for verifying completion of the course was developed. Following development of the required information and procedures, both methods of training were to be submitted to the Director for approval.

In response to the Director's findings that a procedure to verify completion of explosives manufacturers' sponsored training or the self-study guide be developed, the West Virginia November 20 submission contained a copy of the State's "Surface Mine Blasters Examination Application." The application requested, in part, information relating to the applicant's training, whether through self-study or other formal training and the applicant's certification of completion of same. The Director finds the application, together with successful completion of the examination, to be an acceptable procedure to verify that the applicant for certification has actually completed the study. However, the State has not yet revised the Study Guide for West Virginia Surface Mine Blasters nor developed a procedure to verify that any explosives manufacturer training meets the requirements of 30 CFR 850.13(b). Therefore, the Director cannot approve the use of these two methods of training.

B. West Virginia Administrative Regulations, Department of Mines, Chapter 22-4, Series—, Rules and Regulations Governing the Standards for Certification of Blasters, Submitted November 20, 1984

The Director's approval of the West Virginia Blaster Certification Program on September 20 addressed three areas which were found not to be as effective as the provisions of Federal regulations. The Director's approval required that these areas be revised and submitted as a required amendment by November 19, 1984. The following is a discussion of each of these areas, the amendment proposed by the State on November 20, 1984, to address these areas and the Director's Finding on the adequacy of each amendment.

1. 30 CFR 948.16(a) requires that West Virginia amend its program to provide that all persons responsible for the use of explosives on or after 12 months of the effective date of the Director's approval shall be certified in accordance with 30 CFR 850.12(b). This amendment was necessary due to a provision of section 4C.01 of the State's approved surface mining regulations which inappropriately relate the blasting plan requirements to blasts using more than five pounds of explosives. Since the provisions of section 3.01(A) of the State's blasting regulations require certification of blasting personnel who use explosives in accordance with the blasting plan, certain blasts would be exempt from the blaster certification requirements. In addition, since blasting plan requirements apply only to blasts conducted on surface mines, surface blasting at underground mines would not require the certification of blasting personnel.

The November 20 program amendment contained a policy statement intended to address this deficiency. The statement is to be included in the State's policy and procedures manual at page number 25.08. The statement provides that all blasts shall be conducted in accordance with section 4C of the Rules and Regulations (this includes blasts using less than five pounds). The only exception is the deep mine variance concerning public notice.

Thus, the State's policy statement of November 20, 1984, in conjunction with section 4C of the State's regulation, would require: That a blaster certified by the Department of Mines shall be responsible for all blasting operations including the transportation, storage and use of explosives within the permit area and that each application for an operation shall include a blasting plan

which explains how the applicant will comply with the requirements of the subsection. The Director finds that this policy statement, if enforceable, in conjunction with section 4C of the State's regulations would satisfy the required amendment. However, in the absence of a State Attorney General's opinion that the policy statement is legally enforceable despite the existence of the conflicting regulation, the Director finds that the State's policy statement that the exemption does not apply is insufficient to correct the deficiency. Therefore, the Director will notify West Virginia of his decision with regard to this issue and request the State to submit an Attorney General's opinion that the policy statement is legally enforceable. The requirement for an amendment under 30 CFR 948.16(a) will remain in effect and be extended for 60 days to allow the State to submit the amendment.

2. 30 CFR 948.16(b) requires that West Virginia amend its program to provide that a blaster's certification may be suspended or revoked for unlawful use of alcohol, narcotics or other dangerous drugs in the work place as required by 30 CFR 850.15(b)(1)(ii).

The November 20 program amendment proposed a revision to section 6.01(B) of the blaster certification regulations approved by the Director on September 20. The revisions provides that a blaster's certification may be suspended or revoked for use of alcohol, narcotics or other dangerous drugs in the work place and is no less effective than 30 CFR 850.15(b)(1)(ii).

3. 30 CFR 948.16(c) requires that West Virginia amend its program to provide that the blasting crew or others who assist in the use of explosives and are not certified blasters, receive direction and on-the-job training from a certified blaster as required by 30 CFR 850.13(a)(2).

The November 20 program amendment proposed a new section 9 to the blaster certification regulations approved by the Director on September 20. The new section provides that blasting crew members who are not certified blasters or assist in the use of explosives shall receive direction and on-the-job training from a certified blaster and is no less effective than 30 CFR 850.13(a)(2).

IV. Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, acknowledgements were received from the Advisory Council on Historic Preservation; the Department of the

Army, Office of the Chief of Engineers; the Department of the Interior, National Park Service; and, the Department of Labor, Mine Safety and Health Administration. No additional public comments were received.

The Advisory Council on Historic Preservation stated the likelihood exists that implementation of the State program will result in adverse effects upon properties included in or eligible for the National Register of Historic Places. However, no specific comments on the effects were included in its comments. Therefore, the Director is unable to respond to the concerns in relation to the program amendment currently being considered.

The National Park Service stated that the term "surface area of an underground mine" is not defined in the proposed amendment. However, this term is defined in section 2.05 of the State's approved blaster certification regulations. In addition, the National Park Service expressed concern that the amendment did not appear to adequately address the surface effects of blasting associated with underground mining. The amendment currently being considered does not relate to any standards associated with the use of explosives. It deals only with the training, examination and certification of the personnel responsible for the use of explosives. The requirement for certification of personnel responsible for the surface blasting operations of an underground mine is of concern to the Director as discussed in Finding 1 above and in Finding 1 of the Director's approval of the West Virginia blaster certification program published in the *Federal Register* on September 20, 1984 (49 FR 36837).

The disclosure of Federal agency comments is made pursuant to section 552(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the November 20, 1984 amendment to the West Virginia program. However, two methods for satisfying the training provisions of 30 CFR Part 850, as discussed in Finding A above may not be utilized until the State makes the necessary revisions and they are approved by OSM. Also, as indicated in Finding B.1, above, one provision has been found to be less effective than the Federal regulations and must be amended. The Director is amending Part 948 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: April 16, 1985.

Brent W. Blanch,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

1. 30 CFR Part 948 is amended by adding a new § 948.15(b) as follows:

§ 948.15 Approval of regulatory program amendments.

(b) The following amendment submitted to OSM on November 20, 1984, is approved effective April 23, 1985: Amendments to West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22-4 Series —, section 6.01(B) and section 9, submitted to OSM on November 20, 1984. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form

submitted for OSM's review and approval.

2. 30 CFR Part 948 is amended by revising the introductory paragraph and paragraph (a) and removing and reserving paragraphs (b) and (c) of § 948.16 as follows:

§ 948.16 Required program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to make the following program amendments by June 24, 1985.

(a) Amend its program through an Attorney General's opinion or otherwise amend its program to require that all persons responsible for the use of explosives shall be certified in a manner no less effective than 30 CFR 850.12(b).

(b) [Reserved.]

(c) [Reserved.]

[FR Doc. 85-9574 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 721

Standards of Conduct: Correction

AGENCY: Department of the Navy, DOD.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to the Standards of Conduct final rule that was published March 8, 1985, at 50 FR 9000.

FOR FURTHER INFORMATION CONTACT:

Commander G. Sid Smith, JAGC, USN, (Office of the Judge Advocate General), (202) 325-9752.

or

Mr. James T. Tate, Jr. (Office of General Counsel), (202) 692-7186

SUPPLEMENTARY INFORMATION:

In FR Doc. 85-4881 beginning on page 9000, in the issue of Wednesday, March 6, 1985, make the following corrections:

§ 721.6 [Corrected]

1. On page 9002, column 3, in § 721.6(a)(3), the reference in lines 5 and 6 should read "paragraph (a)(2)(iii) or (a)(2)(iv)" instead of "paragraph (a)(2)(c) or (a)(2)(d)."

2. On page 9003, column 3, in § 721.6(g)(2)(xii), the reference should read "SECNAVINST 1650.1" rather than "SECNAVINST 1650."

§ 721.11 [Corrected]

3. On page 9006, column 3, in § 721.11, the last word in line 10 should be "or" instead of "of."

§ 721. [Corrected]

4. On page 9007, column 2, in § 721.14(b), delete the second "Report of" in line 12.

§ 721.15 [Corrected]

5. On page 9009, column 1, in § 721.15(b)(3)(iv), line 1, the words "of this statute" should be inserted between "(c)" and "further."

§ 721.16 [Corrected]

6. On page 9010, column 2, in § 721.16(c), line 9, the last word should be "in" rather than "is."

7. On page 9010, column 3, in § 721.16(e)(6), line 9, delete the words "rate of" between "basic" and "pay."

8. On page 9012, column 2, in § 721.16(k)(1), line 7, a comma should be inserted after "(i)(2)," and another comma should be inserted after "(i)(3)."

9. On page 9014, column 1, in § 721.16(s), the first line at the top of the page, the third word should be spelled "Government" rather than "Govenment."

§ 721.17 [Corrected]

10. In § 721.17 on page 9014, column 2, line 44, the paragraph designation "(e)" should replace the paragraph designation "(3)."

11. On page 9014, column 3, in the introductory text of § 721.17(h), line 1, "The" should replace "This."

Dated: April 16, 1985.

L. W. F. Roos, Jr.,

JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-9745 Filed 4-22-85; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-021; A-4-FRL-2823-7]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Two Visible Emission Evaluation Methods

AGENCY: Environmental Protection Agency.

ACTION: Final action.

SUMMARY: On September 26, 1984, the State of Tennessee submitted two Tennessee Visible Emission Evaluation (TVEE) methods for EPA review, which were adopted by the Tennessee Air Pollution Control Board, and became State-effective, on August 24, 1984. These methods have been evaluated and found to be in conformance with EPA policy. This notice proposes to approve

these methods and incorporate them into the State Implementation Plan (SIP) for Tennessee. The intended effect of these methods is to enable more precise and accurate determinations of visible emissions.

EFFECTIVE DATE: This action will be effective on June 24, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency,
Region IV, Air Management Branch,
345 Courtland Street, N.E., Atlanta,
Georgia 30365

Division of Air Pollution Control,
Tennessee Department of Health and
Environment, 150 9th Avenue, North,
Nashville, Tennessee 37203

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, D.C.
20460

Office of the Federal Register, 1100 L
Street, NW., Room 8401, Washington,
D.C. 20005

FOR FURTHER INFORMATION CONTACT:
Ms. Kelly McCarty, Air Management
Branch, EPA Region IV, at the above
address, and phone 404/881-3286, or
FTS 257-3286.

SUPPLEMENTARY INFORMATION:

Measuring the opacity of a plume of smoke from a specific source is one way of determining whether or not that source is in compliance with the applicable Total Suspended Particulate (TSP) regulations. The two TVEE methods which are today approved by EPA are used to determine exactly how a person should read the opacity of the plumes from certain sources. The opacity is "read" by comparing the opaqueness of the plume with a set of standards and then stating the opacity in terms of percent.

These two methods each include: applicability; a procedure for determining violations, along with the observational error allowed; rules of certification for the observer; and the data reduction methods.

TVEE Method 1—Visual Determination of Opacity of Emissions from Nontraditional Sources. This method is used to determine opacity from sources which are considered "nontraditional", i.e., roads and parking lots, which are not addressed in any

other method for opacity determinations. This method was revised for the following reasons:

- The distance required between the opacity reader and the plume of smoke was not previously specified. This revision changes the distance from "sufficient" to "15 feet".

- A certification procedure for the opacity reader was not previously specified. This revision includes a certification procedure.

- An observational error of 10% was allowed before issuance of a Notice of Violation (NOV). This was felt to be too large and so was reduced to 8.8%.

TVEE Method 2—Visual Determination of Opacity for Aggregate Count Visible Emission Standards. This is a new method for documenting violations of the regulations for opacity limits. EPA Method 9 is the standard method for determining violations of opacity limits, but it is written in terms of 6-minute averages, rather than the aggregate, as is specified in the SIP. Method 9 requires readings to be taken every 15 seconds for 6 minutes, and then the readings are averaged to determine a 6-minute average. If this average is over the opacity limit, then the source is out of compliance, and may be issued an NOV; otherwise, the source is in compliance. Occasionally, a source will run intermittently, for less than 6 minutes (i.e., 4 minutes every half hour). Using Method 9, this source could greatly exceed the opacity limit for the time it runs, and be zero for the rest of the 6 minutes, and still be under the opacity limit after averaging. The SIP addresses this loophole and specifies opacity limits and the number of exceedances allowable in any 1- or 24-hour period; however, prior to adoption of this new method, there was no method for determining if a source was in violation of the limits specified in the SIP. This method addresses that oversight.

Final Action. EPA has reviewed these revisions to the Tennessee SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn, and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of

the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from date of action. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference.

(Sec. 110 of the Clean Air Act, [42 U.S.C. 7410])

Dated: April 17, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

Section 52.2220 is amended by adding paragraph (c)(64) as follows:

§ 52.2220 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(64) Changes in visible emission evaluation methods, submitted on September 28, 1984, by the Tennessee Department of Health and Environment.

[FR Doc. 85-9717 Filed 4-22-85; 8:45 am]

BILLING CODE 5580-50-M

40 CFR Part 60

[AD-FRL 2797-3]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Nitrogen Oxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action is to promulgate "Method 7B, Determination of Nitrogen Oxide Emissions from Stationary Sources Ultraviolet Spectrophotometric Method," which is to be added to Appendix A of 40 CFR Part 60.

The intended effect is to allow nitric acid plants, subject to standards of performance (Subpart G), to use Method 7B as an alternative method. It offers improvements over Method 7 in that the sample analytical time is shortened and precision is improved.

EFFECTIVE DATE: April 23, 1985.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Docket. Docket No. A-83-20, containing material relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Mr. Gary McAlister, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: Method 7B has been proposed because it offers shorter analytical time and better precision than Method 7. This method is to be used as an alternative method and would apply to nitric acid plants only. This rulemaking would not impose any additional emission measurement requirements on any facilities. Rather, the rulemaking would simply add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Public Participation

This test method was proposed and published in the Federal Register on August 3, 1983 (48 FR 35338). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral

presentation of data, views, or arguments concerning the proposed test method, but no one wished to make an oral presentation.

The public comment period was from August 3, 1983, to October 8, 1983. One comment letter concerning the proposed test method was received. This commenter pointed out that the equation for calculating the spectrophotometer was applicable only when the calibration standards specified in the method were used. It was suggested that a general equation be included in the method for cases when different calibration standards were used. This change has been incorporated in the method.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact because it offers an alternative method. Any written comments from the Office of Management and Budget and any written EPA responses are available in the docket.

This proposed rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers, Lime.

Dated: April 8, 1985.

Lee M. Thomas,
Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. By revising § 60.73, paragraph (a) to read as follows:

§ 60.73 Emission Monitoring.

(a) A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained, and operated by the owner or operator. The pollutant gas used to prepare calibration gas mixtures under paragraph 2.1, Performance Specification 2 and for calibration checks under § 60.13(d) to this part shall be nitrogen dioxide (NO_2). The span shall be set at 500 ppm of NO_2 . Method 7, 7A, 7B, 7C, or 7D shall be used for conducting monitoring system performance evaluations under § 60.13(c).

2. By revising § 60.74, paragraphs (a)(1) and (b) to read as follows:

§ 60.74 Test Methods and Procedures.

(a) * * *

(1) Method 7, 7A, 7B, 7C, or 7D for the concentration of NO_2 ;

(b) For Method 7, 7A, 7B, 7C, or 7D the sample site shall be selected according to Method 1 and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than 1 m (3.28 ft). For Method 7, 7A, or 7B, each run shall consist of four grab samples taken at approximately 15-minute intervals. The arithmetic mean of the samples shall constitute the run value. For Method 7C or 7D, each run shall consist of a 1-hour sample. A velocity

traverse shall be performed once per run.

3. By amending Appendix A by adding a new method 7B as follows:

Appendix A**Method 7B. Determination of Nitrogen Oxide Emissions From Stationary Sources (Ultraviolet Spectrophotometry)****1. Applicability and Principle**

1.1 **Applicability.** This method is applicable to the measurement of nitrogen oxides emitted from nitric acid plants. The range of the method as outlined has been determined to be 57 to 1,500 milligrams NO_x (as NO_2) per dry standard cubic meter, or 30 to 786 ppm NO_x (as NO_2), assuming corresponding standards are prepared.

1.2 **Principle.** A grab sample is collected in an evacuated flask containing a dilute sulfuric acid-hydrogen peroxide absorbing solution; and the nitrogen oxides, except nitrous oxide, are measured by ultraviolet absorption.

2. Apparatus

2.1 **Sampling.** Same as Method 7, Section 2.1.1 through Section 2.1.11.

2.2 **Sample Recovery.** The following equipment is required for sample recovery:

2.2.1 **Wash Bottle.** Polyethylene or glass.

2.2.2 **Volumetric Flasks.** 100-ml (one for each sample).

2.3 **Analysis.** The following equipment is needed for analysis:

2.3.1 **Volumetric Pipettes.** 5-, 10-, 15-, and 20-ml to make standards and sample dilutions.

2.3.2 **Volumetric Flasks.** 1000- and 100-ml for preparing standards and dilution of samples.

2.3.3 **Spectrophotometer.** To measure ultraviolet absorbance at 210 nm.

2.3.4 **Analytical Balance.** To measure to within 0.1 mg.

3. Reagents

Unless otherwise indicated, all reagents are to conform to the specifications established by the committee on analytical reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

3.1 **Sampling.** Same as Method 7, Section 3.1. It is important that the amount of hydrogen peroxide in the absorbing solution not be increased. Higher concentrations of peroxide may interfere with sample analysis.

3.2 **Sample Recovery.** Same as for Method 7, Section 3.2.2.

3.3 **Analysis.** Same as for Method 7, Sections 3.3.4, 3.3.5, and 3.3.7 with the addition of the following:

3.3.1 **Working Standard KNO_3 Solution.** Dilute 10 ml of the standard solution to 1000 ml with water. One milliliter of the working standard is equivalent to 10 μg nitrogen dioxide (NO_2).

3.3.2 **Absorbing Solution.** Same as in Section 3.1.

3.3.3 **Quality Assurance Audit Samples.** Nitrate samples are prepared in glass vials by the Environmental Protection Agency (EPA), Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina. Each set will consist of two vials with two unknown concentrations. When making compliance determinations, obtain the audit samples from the quality assurance management office at each EPA regional office.

4. Procedures

4.1 **Sampling.** Same as Method 7, Sections 4.1.1 and 4.1.2.

4.2 **Sample Recovery.** Let the flask sit for a minimum of 16 hours, and then shake the contents for 2 minutes. Connect the flask to a mercury filled U-tube manometer. Open the valve from the flask to the manometer, and record the flask temperature (T_f), the barometric pressure, and the difference between the mercury levels in the manometer. The absolute internal pressure in the flask (P_f) is the barometric pressure less the manometer reading.

Transfer the contents of the flask to a 100-ml volumetric flask. Rinse the flask three times with 10-ml portions of water, and add to the volumetric flask. Dilute to 100 ml with water. Mix thoroughly. The sample is now ready for analysis.

4.3 **Analysis.** Pipette a 20-ml aliquot of sample into a 100-ml volumetric flask. Dilute to 100 ml with water. The sample is now ready to be read by ultraviolet spectrophotometry. Using the blank as zero reference, read the absorbance of the sample at 210 nm.

4.4 **Audit Analysis.** With each set of compliance samples or once per analysis day, or once per week when averaging continuous samples, analyze each performance audit in the same manner as the sample to evaluate the analyst's technique and standard preparation. The same person, the same reagents, and the same analytical system must be used both for compliance determination samples and the EPA audit samples. Report the results of all audit samples with the results of the compliance determination samples. The relative error will be determined by the regional office or the appropriate enforcement agency.

5. Calibration

Same as Method 7, Section 5.1 and Sections 5.3 through 5.6 with the addition of the following:

5.1 **Determination of Spectrophotometer Standard Curve.** Add 0.0 ml, 5 ml, 10 ml, 15 ml, and 20 ml of the KNO_3 working standard solution (1 ml-10 μg NO_2) to a series of five 100-ml volumetric flasks. To each flask, add 5 ml of absorbing solution. Dilute to the mark with water. The resulting solutions contain 0.0, 50, 100, 150, and 200 μg NO_2 , respectively. Measure the absorbance by ultraviolet spectrophotometry at 210 nm, using the blank as a zero reference. Prepare a standard curve plotting absorbance vs. μg NO_2 .

Note.—If other than a 20-ml aliquot of sample is used for analysis, then the amount of absorbing solution in the blank and standards must be adjusted such that the same amount of absorbing solution is in the blank and standards as is in the aliquot of sample used. Calculate the spectrophotometer calibration factor as follows:

$$K_c = \frac{\sum_{i=1}^N \frac{M_i A_i}{A_i^2}}{N} \quad (\text{Eq. 7.1.})$$

Where:

M_i = Mass of NO_2 in standard i , μg .

A_i = Absorbance of NO_2 standard i .

N = Total number of calibration standards.

For the set of calibration standards specified here, Equation 7-1 simplifies to the following:

$$K_c = 50 \frac{A_1 + 2A_2 + 3A_3 + 4A_4}{A_1^2 + A_2^2 + A_3^2 + A_4^2} \quad (\text{Eq. 7.2})$$

6. Calculations

Same as Method 7, Sections 6.1, 6.2, and 6.4 with the addition of the following:

6.1 Total $\mu\text{g NO}_2$ Per Sample:

$$m = 5K_c AF \quad (\text{Eq. 7-3})$$

Where:

5 = 100/20, the aliquot factor.

Note.—If other than a 20-ml aliquot is used for analysis, the factor 5 must be replaced by a corresponding factor.

6.2 Relative Error (RE) for Quality Assurance Audits.

$$RE = \frac{C_a - C_s}{C_s} \times 100 \quad (\text{Eq. 7-4})$$

Where:

C_a = Determined audit concentration.

C_s = Actual audit concentration.

7. Bibliography

1. National Institute for Occupational Safety and Health Recommendations for Occupational Exposure to Nitric Acid. In: Occupational Safety and Health Reporter. Washington, D.C. Bureau of National Affairs, Inc. 1976, p. 149.

2. Rennie, P.J., A.M. Sumner, and F.B. Basketter. "Determination of Nitrate in Raw, Potable, and Waste Waters by Ultraviolet Spectrophotometry." "Analyst." Vol. 104. September 1979, p. 837.

[FR Doc. 85-9715 Filed 4-22-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 153 and 154

[CGD 81-052]

Compliance Procedures for Self-Propelled Foreign-Flag Vessels Carrying Hazardous Liquids and Bulk Liquefied Gases

Correction

In FR Doc. 85-5177 beginning on page 8730 in the issue of Tuesday, March 5, 1985, make the following corrections:

1. On page 8733, in the first column, in § 153.9, after the introductory text of paragraph (a), insert the following paragraph (1):

"(1) An additional classification society statement that the vessel complies with § 153.530 (b), (d), and (p)(1) if a person desires a Certificate of Compliance endorsed with the name of an alkylene oxide; and"

2. On page 8734, in the first column, in § 153.809 (c)(4), in the second line, "are board" should read "are on board".

3. On page 8734, in the third column, in footnote 1 to § 154.5(a), in the third line, "Subchapter C" should read "Subchapter O".

4. On page 8734, in the third column, in § 154.151(b)(1), in the fourth line, "to the" should read "to a".

BILLING CODE 1505-01-M

Research and Special Programs Administration

49 CFR Part 195

[Amdt. 195-33, Docket PS-80]

Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Final rule.

SUMMARY: The existing Federal safety standards for pipelines transporting hazardous liquids apply to pipelines operating in interstate or foreign commerce. This final rule extends the applicability of these standards to include pipelines transporting hazardous liquids that affect interstate or foreign commerce, sometimes called intrastate pipelines. The Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) requires this action to provide for consistent State regulation of risks associated with intrastate transportation of hazardous liquids.

EFFECTIVE DATES: The effective date of this final rule is October 21, 1985, except that the effective date of § 195.402 with respect to intrastate pipelines is April 23, 1987.

FOR FURTHER INFORMATION CONTACT:

Frank Robinson, (202) 426-2392, regarding the content of this final rule, Barbara Betsock (202) 755-4972 concerning Appendix A, or the Dockets Branch (202) 426-3148, regarding other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 203(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 U.S.C. 2002) requires the Secretary of Transportation to establish minimum Federal safety standards for the transportation of hazardous liquids by pipeline in or affecting interstate or foreign commerce. Once the Federal standards are established, section 205 of the HLPESA provides for State adoption and enforcement of the Federal standards with respect to "intrastate pipelines," or pipelines to which the HLPESA applies which are not used in interstate or foreign commerce. Although State safety regulation of interstate pipelines is preempted, the HLPESA permits States to adopt additional or more stringent safety standards for intrastate pipelines, provided they are compatible with the Federal standards (49 U.S.C. 2002(d)).

On July 20, 1981, MTB reissued the safety standards in 49 CFR Part 195 under section 203 of the HLPESA, and applied the standards to pipelines transporting petroleum, petroleum products, or anhydrous ammonia in interstate or foreign commerce (48 FR 38357). At that time, MTB decided to defer further application of the standards to similar intrastate pipelines for at least 2 years, allowing interested State agencies time to prepare for participation under the section 205 program.

Thereafter, MTB solicited State participation under section 205 and learned that 15 States had enabling legislation for the safety regulation of intrastate pipelines, while 7 other States were considering it.

Then on March 26, 1984, the MTB published a notice of proposed rulemaking (NPRM), proposing that the existing Federal safety standards (49 CFR Part 195), with minor modifications, be extended to cover intrastate pipelines (49 FR 11226). It was estimated that about 11,000 miles of pipeline would be affected by the proposal, 88 percent of which are within States that either

have enabling legislation or are seeking it.

Six associations (North Texas Oil and Gas Association, West Central Texas Oil and Gas Association, American Petroleum Institute, Pennsylvania Oil and Gas Association, Rocky Mountain Oil and Gas Association, and the Texas Mid-Continental Oil and Gas Association), three state agencies (Texas Railroad Commission, Iowa State Commerce Commission, and the Public Utility Commission of Oregon), together with twenty-three pipeline operators responded to the NPRM.

The purpose of the NPRM and of this final rule is not only to control the risk presented by intrastate hazardous liquid pipelines, but also to provide, through minimum Federal safety standards, continuity among State regulations. Safety regulation of intrastate hazardous liquid pipelines is an activity that is open to all States. Without the limited Federal preemption of State regulation provided by issuance of the Federal standards, the potential of inconsistent regulation of intrastate pipelines from State to State could have an undesirable effect on operators with intrastate pipelines in more than one State. Further, the preemptive language of the HLPSSA matches similar preemptive provisions of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 *et. seq.*) The two statutes show a clear Congressional intent to provide a uniform Federal policy for the regulation of interstate and intrastate pipelines transporting hazardous materials in gas or liquid form.

General comments

Most of the commenters recognized that section 203(a) of the HLPSSA requires the safety regulation of intrastate pipelines as stated in the NPRM.

However, one of the associations opposed regulation of intrastate pipelines, arguing that there is no significant safety or health problem posed by these pipelines. Also, one operator argued that the associated costs and benefits do not justify regulation of intrastate pipelines. MTB does not agree with these two commenters. Intrastate pipelines carry the same hazardous liquids as interstate pipelines, the characteristics of which are flammability, toxicity, or explosivity. Because intrastate pipelines have been generally designed, constructed, tested, maintained, and operated in the same manner as interstate pipelines, it is reasonable to assume that the results of accidents should not differ appreciably from those of interstate pipelines. While the accident rate for interstate pipelines

has been excellent, the hazardous characteristics of the liquids and the potential for harm if an accident should occur render regulation appropriate. Furthermore, Congress has made it clear that such regulation is desirable. In addition, the Final Evaluation for this rulemaking, titled "Assessing the Impact of Federal Regulation of Intrastate Hazardous Liquid Pipelines," shows a net benefit from Federal safety regulation of intrastate pipelines. Due to reduction in the number of expected accidents following regulation, cost reduction of between \$120,000 and \$950,000 a year should be achieved, depending on the number of States that begin regulating intrastate pipelines. The evaluation is available for inspection in the docket.

On December 7, 1983 a draft of the NPRM was discussed by the Technical Hazardous Liquid Pipeline Safety Standards Committee at a meeting in Washington, D.C. The Committee in its report found the proposed rules to be technically feasible, reasonable and practicable. (A copy of the Committee's report is available in the docket for public inspection and copying). The Committee recommended that the NPRM be sent to various oil and gas associations, and this was done after it was published in the *Federal Register*. The Committee also recommended that MTB seek comments from the public concerning appropriate definitions of "rural", "non-rural", "gathering systems", and "significant economic impact". Except for "significant economic impact" public comments were solicited for these definitions in the NPRM, as further discussed below under the subheading "Gathering lines." A definition for "significant economic impact" (10 percent or more of current cash flow) was developed by MTB and was used in the Draft and Final Evaluation of the economic impact of this rulemaking.

The Committee made a further recommendation concerning cathodic protection. This recommendation is discussed below under the Section § 195.414 heading.

Choice of Standards

None of the commenters argued that Part 195 is inappropriate for intrastate pipelines. Most agreed with the MTB that Part 195 is the best choice. MTB's experience with the pipeline industry shows that intrastate pipelines have been generally designed, constructed, tested, maintained, and operated in the same manner as interstate pipelines. Further, most intrastate operators voluntarily utilize the current Federal safety standards now applicable to

interstate facilities or the industry code, ANSI B31.4, upon which the Federal standards were based, totally or in part as their safety standards. Consequently, in this final rule, MTB adopts the existing Federal safety standards in Part 195, which apply to interstate pipelines transporting petroleum, petroleum products, or anhydrous ammonia, as appropriate safety standards for intrastate pipelines carrying these commodities.

Gathering Lines

In an effort to better delineate in § 195.1(b)(4) those rural, onshore gathering lines that are not subject to the HLPSSA, MTB proposed minor clarifying changes to the language of § 195.1(b)(4). Since there were no adverse comments, this section is revised as proposed.

MTB also solicited comments on the distinction between "rural" and "nonrural" and the points that mark the beginning and end of a gathering line in order to facilitate the application of § 195.1(b)(4) to intrastate pipelines. Thirty-four commenters responded with varying concepts of the points that mark the beginning and end of a gathering line.

In addition, MTB took the gathering line issue before the Technical Hazardous Liquid Pipeline Safety Standards Committee on November 1, 1984, and again on February 27, 1985, to obtain the views of the Committee. Although the Committee did not take formal action, views expressed by individual Committee members have been considered in this rulemaking.

A few Committee members together with the majority of industry commenters considered flow lines to be part of production rather than transportation. (Flow lines are found at production sites and are used to move produced hydrocarbons from a well to a point where gas, oil and water are separated.) Other Committee members were uncertain about whether flow lines were normally considered to be part of production, but expressed concerns about a possible unneeded extension of Federal regulation. Only two commenters considered a gathering line to extend to the well head.

Perhaps the most significant concern expressed at the Committee meetings was that if flow lines were considered part of gathering lines, and not part of onshore production, numerous small intrastate entities that operate production facilities containing flow lines in non-rural areas would become subject to Part 195. This is so because, as proposed, Part 195 would not apply to

"onshore production" but would cover certain gathering lines in non-rural areas in conformity with the limits of the HLPSSA. Committee members further stated that many small entities operate flow lines in conjunction with marginal wells, and the cost of compliance with Part 195 for the flow lines could make production from these wells uneconomical.

The NPRM stated that the proposed intrastate regulations "will not have a significant economic impact on a substantial number of small entities." In fact, the Draft Evaluation predicted the proposal would "affect no small firms at all," and this was certainly MTB's intent in issuing the NPRM. It seems now, however, that the evaluation did not consider the impact on the many small entities that might be affected if MTB were to consider non-rural gathering lines to encompass flow lines or, conversely, MTB did not consider "onshore production" to encompass flow lines.

In conclusion, there is no information in the record indicating a pressing safety need to regulate flow lines. There is nothing (such as a need to facilitate interstate commerce) to indicate an existing, pressing need for the consistency of regulation that imposition of uniform Federal minimum standards would bring to flow lines. Furthermore, a reading of the legislative history of the HLPSSA tends to support a conclusion that Congress intended flow lines to be excluded from regulation as part of onshore production. Finally, MTB's Draft Evaluation did not consider the impact on small entities if flow lines were considered part of gathering lines. Therefore, § 195.1(b)(6) has been amended to clearly indicate that onshore flow lines are considered part of production facilities and are excluded from the applicability of the Part 195 regulations. This change should make Part 195 comport with the Final Evaluation's conclusion that there is no impact on small entities. The change should not affect interstate pipelines because it is doubtful that any flow lines operate in interstate commerce or that Part 195 applies to any that do. States which do have some special local concerns about the safety of flow lines would remain free to address them through State regulation.

Following review of comments received on the distinction between rural and nonrural and the point that marks the end of a gathering line and the beginning of a trunkline, MTB recognizes that the existing regulatory language for the exclusion may not provide the clarity desirable in a

regulation. In the near future, MTB intends to propose language changes or definitions that will provide the necessary clarity.

Section 195.1 Applicability, Section 195.2 Definitions.

The NPRM proposed to extend the applicability of Part 195 to intrastate pipelines by addition of the term "in or affecting interstate or foreign commerce" in § 195.1(a). At the same time, MTB proposed to delete the § 195.1(a)(1) reference to the jurisdiction of the Federal Energy Regulatory Commission [FERC]. The FERC reference and the § 195.1(a)(2) reference to pipeline facilities on the Outer Continental Shelf have been used to delineate interstate pipeline facilities to which Part 195 applies. Deletion of the FERC reference and the proposed new wording of § 195.1(a) were intended to state the applicability of Part 195 in terms that comport with the language of the HLPSSA.

Two new definitions were proposed in § 195.2 for "Interstate pipeline" and "Intrastate pipeline" to distinguish the two terms for purposes of certain changes proposed to Part 195 to accommodate coverage of intrastate pipelines.

Only one commenter argued against deletion of the FERC reference. This commenter said that the proposed method of identifying jurisdictional pipelines and definitions for interstate and intrastate pipelines would (1) confuse rather than clarify, the distinction between interstate and intrastate pipelines (2) encourage States to develop regulations disparate from Part 195 and apply these regulations segmentally to integral parts of an interstate pipeline system, seriously impeding the safety and efficiency of pipeline operations, and (3) create conflicts which can only be resolved by protracted and wasteful litigation. The commenter recommended a definition of "Interstate pipeline" as follows:

Interstate Pipeline means a pipeline which is used in the transportation of hazardous liquids in interstate or foreign commerce, or is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Authority of the Interstate Commerce Act.

The MTB recognizes the potential for confusion cited by this commenter. It believes, however, that the best way to avoid these difficulties is to base the Part 195 jurisdictional reach and definitions on the language of the HLPSSA as much as possible, without adding the complicating factor of determining whether pipeline facilities are subject to FERC jurisdiction. The

issue of FERC jurisdiction often is not readily resolvable, because FERC's list of facilities on record does not definitively represent the pipeline facilities that are legally "subject to" its jurisdiction. Consequently, although MTB has not adopted the commenter's recommended definition, for consistency with the HLPSSA, the proposed definitions of "interstate pipeline" and "intrastate pipeline" have been modified.

As noted in the NPRM, MTB will continue to use evidences of FERC jurisdiction to provide some indication whether a particular facility is interstate or intrastate. In recognition of questions that have arisen in the past through use of a FERC reference and of potential problems of application of the definitions, MTB believes it appropriate to state its interpretation of the jurisdictional delineations provided in the HLPSSA and to provide guidelines on how MTB will use the evidences of FERC jurisdiction in applying the definitions. Accordingly, MTB will attach a statement of agency policy and interpretation on the delineation between Federal and State jurisdiction to Part 195 as Appendix A.

Because the new Appendix A is not part of the regulation itself, but a statement of agency policy and interpretation, it is published without need for notice and comment. However, comments are invited on possible refinements to the examples given that would provide clearer guidance or on possible situations that do not appear to be addressed in the examples. Comments received before June 1, 1985, which should be addressed to the Office of Chief Counsel, Research and Special Programs Administration, will be considered in any future refinements of Appendix A.

Section 195.300 Scope.

As proposed in the NPRM, § 195.300(d) is added to specifically include onshore steel intrastate pipelines constructed before October 21, 1985 that transport highly volatile liquids.

Section 195.302(b) General Requirements.

One commenter recommended that the one year period for planning and scheduling hydrostatic tests under § 195.302(b)(2)(i) be lengthened from one year to two years. The one year planning and scheduling period was adequate when this rule was adopted for interstate pipelines and, in the absence of information to the contrary,

the MTB believes the one year period is adequate for intrastate pipelines.

Section 195.401.

One commenter recommended that § 195.401(c)(3) refers to the date design was begun rather than the date construction was begun or, alternatively, to delay the effective date until 180 days after publication. The commenter argued that the proposed rule could result in wasted money on design work and materials procurement for pipelines in the design phase at the time the rule is published. In order to avoid this potential waste, the effective date of this final rule has been set as 180 days after publication, and this date is reflected in § 195.401(c)(3). The six month period should also allow intrastate operators time to fully prepare for compliance with Part 195 operation and maintenance rules in addition to design, construction and testing requirements. Further, additional time for compliance with §§ 195.402 and 195.406 is discussed below. In addition, the six-month period allows time for State agencies and MTB to complete the process of certification or agreement under section 205 of the HLPESA.

Section 195.402 and 195.406.

No adverse comments were received regarding these sections. The effective date of § 195.402 is postponed until 2 years after publication as proposed in the NPRM. The amendment to § 195.402 is adopted as proposed, except that the effective date is delayed until 180 days after publication as discussed above under § 195.402.

Section 195.414.

One commenter recommended that the extended compliance time in § 195.414(b) should allow a period longer than 5 years where good cause is shown. However, the proposed 5-year period is adopted since it proved adequate for interstate pipelines and, in the absence of information to the contrary, should be adequate for intrastate pipelines. For good cause, a longer compliance period can be sought under the waiver provisions of Section 203 of the HLPESA.

Another commenter recommended that § 195.414(c) be clarified to specifically exclude underground storage facilities, because the methods of corrosion protection for underground storage differ from those for above ground storage and station piping. The MTB did not adopt the recommendation, however, for two reasons: (1) As stated in the NPRM, the purpose of this rulemaking is to establish identical standards for interstate and intrastate

pipelines rather than examine the need for or merits of particular standards, and (2) the MTB believes that § 195.414(c) is sufficiently broad to permit the various methods of corrosion protection.

The Technical Hazardous Liquid Pipeline Safety Standards Committee during its December 7, 1983, meeting recommended that the wording of § 195.414 be changed to require cathodic protection "effectively coated" as opposed to "coated" pipelines, because some externally coated pipelines might better fall in the category of bare pipelines due to the amount of current which would be required to achieve a protected state. This distinction applies to gas pipelines under 49 CFR 192.457, and effective coating is defined in terms of the pipeline's cathodic protection current requirements. Further, § 195.414 has historically been applied by MTB in the manner suggested by the Committee. Consequently, the wording of § 195.414 has been changed in this final rule as recommended by the Committee and to be consistent with the manner in which the rule has been applied. Also, the definition of effective coating found in § 192.457 is added to § 195.414.

Information Collection

The NPRM stated that the accident reporting requirements of Subpart B as well as the recordkeeping requirements of §§ 195.266, 195.310, and 195.404 are under review. A temporary exception from these requirements was proposed under § 195.1(c) for intrastate pipelines until pending revisions are completed. In Docket PS-82 (49 FR 44928, November 13, 1984), MTB proposed that revised recordkeeping and accident reporting requirements be adopted for interstate pipelines and that the revised requirements be applied to intrastate pipelines. When final rules in Docket PS-82 are issued (scheduled for early 1985), the temporary exception under § 195.1(c) will be lifted.

One state agency recommended imposing the accident reporting requirements of Subpart B and the recordkeeping requirements of § 195.404 immediately, arguing that the accident reports and the maps and records are necessary to (1) allow timely onsite accident investigation, and (2) provide information necessary for damage prevention programs.

While the MTB is fully aware of the usefulness of the accident reports as well as the maps and records, it did not adopt this recommendation. MTB believes that whatever temporary enforcement difficulties are caused by delaying adoption of the information collection requirements are small compared to the hardship that would be

caused intrastate operators by adopting the current rules and then imposing revised rules shortly thereafter.

Classification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979) based on a Final Evaluation of the economic impact of this rule, a copy of which is in the docket. Based on the Evaluation, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 195

Interstate pipeline, Intrastate pipeline, Ammonia Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

PART 195—[AMENDED]

In view of the foregoing, the MTB amends 49 CFR Part 195 in the following manner:

1. By revising §§ 195.1 (a), (b)(4), and (b)(6), and adding a new paragraph (c) to read as follows:

§ 195.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf.

(b)
(4) Transportation of a hazardous liquid in those parts of an onshore pipeline system that are located in rural areas between a production facility and an operator trunkline reception point;
.

(6) Transportation of a hazardous liquid through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities;
.

(c) Subpart B of this part and §§ 195.266, 195.310, and 195.404 do not apply to intrastate pipelines.

2. By adding two new definitions to § 195.2 to read as follows:

§ 195.2 Definitions.

Interstate pipeline means a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids in interstate or foreign commerce.

Intrastate pipeline means a pipeline or that part of a pipeline to which this

part applies that is not interstate pipeline.

3. By revising §195.300 to read as follows:

§195.300 Scope.

This subpart prescribes minimum requirements for hydrostatic testing of the following. It does not apply to movement of pipe covered by §195.424.

(a) Newly constructed steel pipeline systems;

(b) Existing steel pipeline systems that are relocated, replaced, or otherwise changed;

(c) Onshore steel interstate pipelines constructed before January 8, 1971, that transport highly volatile liquids; and

(d) Onshore steel intrastate pipelines constructed before October 21, 1985, that transport highly volatile liquids.

4. By revising §195.302(b) to read as follows:

§195.302 General requirements.

(b) No person may transport a highly volatile liquid in an onshore steel interstate pipeline constructed before January 8, 1971, or an onshore steel intrastate pipeline constructed before October 21, 1985, unless the pipeline has been hydrostatically tested in accordance with this subpart or, except for pipelines subject to §195.5, its maximum operating pressure is established under §195.406(a)(5). Dates to comply with this requirement are:

(1) For onshore steel interstate pipelines in highly volatile liquid service before September 8, 1980—

(i) Planning and scheduling of hydrostatic testing or actual reduction in maximum operating pressure to meet §195.406(a)(5) must be completed before September 15, 1985; and

(ii) Hydrostatic testing must be completed before September 15, 1985, with at least 50 percent of the testing completed before September 15, 1983.

(2) For onshore steel intrastate pipelines in highly volatile liquid service before April 23, 1985—

(i) Planning and scheduling of hydrostatic testing or actual reduction in maximum operating pressure to meet §195.406(a)(5) must be completed before April 23, 1986; and

(ii) Hydrostatic testing must be completed before April 23, 1990 with at least 50 percent of the testing completed before April 23, 1988.

5. Section 195.401(c) is revised to read as follows:

§195.401 General requirements.

(c) Except as provided by §195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

(1) An interstate pipeline on which construction was begun after March 31, 1970.

(2) An interstate offshore pipeline located between a production facility and an operator's trunkline reception point on which construction was begun after July 31, 1977.

(3) An intrastate pipeline on which construction was begun after October 21, 1985.

6. By revising §195.406(a)(5) to read as follows:

§195.406 Maximum Operating Pressure

(a) * * *

(5) In the case of onshore HVL interstate pipelines constructed before January 8, 1971, or onshore HVL intrastate pipelines constructed before October 21, 1985, that have not been tested under Subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted. (See §195.302(b) for compliance schedules for HVL interstate pipelines in service before September 8, 1980, and for HVL intrastate pipelines in service before April 23, 1985.)

7. By revising §195.414 to read as follows:

§195.414 Cathodic protection.

(a) No operator may operate an interstate pipeline after March 31, 1973, or an intrastate pipeline after October 19, 1988, that has an effective external surface coating material, unless that pipeline is cathodically protected. This paragraph does not apply to breakout tank areas and buried pumping station piping. For the purposes of this subpart, a pipeline does not have an effective external coating and shall be considered bare, if its cathodic protection current requirements are substantially the same as if it were bare.

(b) Each operator shall electrically inspect each bare interstate pipeline before April 1, 1975, and each bare intrastate pipeline before October 20, 1990 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide

cathodic protection. Section 195.416 (f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on interstate pipelines before April 1, 1973, and on intrastate pipelines before October 20, 1988 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

8. By adding a new Appendix A to read as follows:

Appendix A—Delineation Between Federal and State Jurisdiction—Statement of Agency Policy and Interpretation

In 1979, Congress enacted comprehensive safety legislation governing the transportation of hazardous liquids by pipeline, the Hazardous Liquids Pipeline Safety Act of 1979, 49 U.S.C. 2001 *et seq.* (HLPSPA). The HLPSPA expanded the existing statutory authority for safety regulation, which was limited to transportation by common carriers in interstate and foreign commerce, to transportation through facilities used in or affecting interstate or foreign commerce. It also added civil penalty, compliance order, and injunctive enforcement authorities to the existing criminal sanctions. Modeled largely on the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671 *et seq.* (NGPSA), the HLPSPA provides for a national hazardous liquid pipeline safety program with nationally uniform minimal standards and with enforcement administered through a Federal-State partnership. The HLPSPA leaves to exclusive Federal regulation and enforcement the "interstate pipeline facilities," those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce. For the remainder of the pipeline facilities, denominated "intrastate pipeline facilities," the HLPSPA provides that the same Federal regulation and enforcement will apply unless a State certifies that it will assume those responsibilities. A certified State must adopt the same minimal standards but may adopt additional more stringent standards so long as they are compatible. Therefore, in States which participate in the hazardous liquid pipeline safety program through certification, it is necessary to distinguish the interstate from the intrastate pipeline facilities.

In deciding that an administratively practical approach was necessary in distinguishing between interstate and intrastate liquid pipeline facilities and in determining how best to accomplish this, DOT has logically examined the approach used in the NGPSA. The NGPSA defines the interstate gas pipeline facilities subject to exclusive Federal jurisdiction as those subject to the economic regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC). Experience has proven this approach practical. Unlike the NGPSA however, the HLPSPA has no specific reference to FERC jurisdiction, but instead

defines interstate liquid pipeline facilities by the more commonly used means of specifying the end points of the transportation involved. For example, the economic regulatory jurisdiction of FERC over the transportation of both gas and liquids by pipeline is defined in much the same way. In implementing the HLPDA DOT has sought a practicable means of distinguishing between interstate and intrastate pipeline facilities that provide the requisite degree of certainty to Federal and State enforcement personnel and to the regulated entities. DOT intends that this statement of agency policy and interpretation provide that certainty.

In 1981, DOT decided that the inventory of liquid pipeline facilities identified as subject to the jurisdiction of FERC approximates the HLPDA category of "interstate pipeline facilities." Administrative use of the FERC inventory has the added benefit of avoiding the creation of a separate Federal scheme for determination of jurisdiction over the same regulated entities. DOT recognizes that the FERC inventory is only an approximation and may not be totally satisfactory without some modification. The difficulties stem from some significant differences in the economic regulation of liquid and of natural gas pipelines. There is an affirmative assertion of jurisdiction by FERC over natural gas pipelines through the issuance of certificates of public convenience and necessity prior to commencing operations. With liquid pipelines, there is only a rebuttable presumption of jurisdiction created by the filing by pipeline operators of tariffs (or concurrences) for movement of liquids through existing facilities. Although FERC does police the filings for such matters as compliance with the general duties of common carriers, the question of jurisdiction is normally only aired upon complaint. While any person, including State or Federal agencies, can avail themselves of the FERC forum by use of the complaint process, that process has only been rarely used to review jurisdictional matters (probably because of the infrequency of real disputes on the issue). Where the issue has arisen, the reviewing body has noted the need to examine various criteria primarily of an economic nature. DOT believes that, in most cases, the formal FERC forum can better receive and evaluate the type of information that is needed to make decisions of this nature than can DOT.

In delineating which liquid pipeline facilities are interstate pipeline facilities within the meaning of the HLPDA, DOT will generally rely on the FERC filings; that is, if there is a tariff or concurrence filed with FERC governing the transportation of hazardous liquids over a pipeline facility or if there is a tariff or concurrence filed with obligation to file tariffs obtained from FERC, then DOT will, as a general rule, consider the facility to be an interstate pipeline facility within the meaning of the HLPDA. The types of situations in which DOT will ignore the existence or non-existence of a filing with FERC will be limited to those cases in which it appears obvious that a complaint filed with FERC would be successful or in which blind reliance on a FERC filing would result in a situation clearly not intended by the HLPDA such as a pipeline facility not being subject to

either State or Federal safety regulation. DOT anticipates that the situations in which there is any question about the validity of the FERC filings as a ready reference will be few and that the actual variations from reliance on those filings will be rare. The following examples indicate the types of facilities which DOT believes are interstate pipeline facilities subject to the HLPDA despite the lack of a filing with FERC and the types of facilities over which DOT will generally defer to the jurisdiction of a certifying state despite the existence of a filing with FERC.

Example 1. Pipeline company P operates a pipeline from "Point A" located in State X to "Point B" (also in X). The physical facilities never cross a state line and do not connect with any other pipeline which does cross a state line. Pipeline company P also operates another pipeline between "Point C" in State X and "Point D" in an adjoining State Y. Pipeline company P files a tariff with FERC for transportation from "Point A" to "Point B" as well as for transportation from "Point C" to "Point D." DOT will ignore filing for the line from "Point A" to "Point B" and consider the line to be intrastate.

Example 2. Same as in example 1 except that P does not file any tariffs with FERC. DOT will assume jurisdiction of the line between "Point C" and "Point D."

Example 3. Same as in example 1 except that P files its tariff for the line between "Point C" and "Point D" not only with FERC but also with State X. DOT will rely on the FERC filing as indication of interstate commerce.

Example 4. Same as in example 1 except that the pipeline from "Point A" to "Point B" (in State X) connects with a pipeline operated by another company transports liquid between "Point B" (in State X) and "Point D" (in State Y). DOT will rely on the FERC filing as indication of interstate commerce.

Example 5. Same as in example 1 except that the line between "Point C" and "Point D" has a lateral line connected to it. The lateral is located entirely within State X. DOT will rely on the existence or non-existence of a FERC filing covering transportation over that lateral as determinative of interstate commerce.

Example 6. Same as in example 1 except that the certified agency in State X has brought an enforcement action (under the pipeline safety laws) against P because of its operation of the line between "Point A" and "Point B". P has successfully defended against the action on jurisdictional grounds. DOT will assume jurisdiction if necessary to avoid the anomaly of a pipeline subject to neither State or Federal safety enforcement. DOT's assertion of jurisdiction in such a case would be based on the gap in the state's enforcement authority rather than a DOT decision that the pipeline is an interstate pipeline facility.

Example 7. Pipeline Company P operates a pipeline that originates on the Outer Continental Shelf. P does not file any tariff for that line with FERC. DOT will consider the pipeline to be an interstate pipeline facility.

Example 8. Pipeline Company P is constructing a pipeline from "Point C" (in State X) to "Point D" (in State Y). DOT will consider the pipeline to be an interstate pipeline facility.

Example 9. Pipeline company P is constructing a pipeline from "Point C" to "Point E" (both in State X) but intends to file tariffs with FERC in the transportation of hazardous liquid in interstate commerce. Assuming there is some connection to an interstate pipeline facility, DOT will consider this line to be an interstate pipeline facility.

Example 10. Pipeline Company P has operated a pipeline subject to FERC economic regulation. Solely because of some statutory economic deregulation, that pipeline is no longer regulated by FERC. DOT will continue to consider that pipeline to be an interstate pipeline facility.

As seen from the examples, the types of situations in which DOT will not defer to the FERC regulatory scheme are generally clear-cut cases. For the remainder of the situations where variation from the FERC scheme would require DOT to replicate the forum already provided by FERC and to consider economic factors better left to that agency, DOT will decline to vary its reliance on the FERC filings unless, of course, not doing so would result in situations clearly not intended by the HLPDA.

(49 U.S.C. 2002; 49 CFR 1.53 and Appendix A of Part 1)

Issued in Washington, D.C. on April 17, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85-9609 Filed 4-22-85; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1130

[Docket No. 37130 (Sub-No. 2)]

Special Docket Proceedings— Exemption From Letter-of-Intent Requirement Involving Amounts of \$5,000 or Less

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rules that eliminate the Letter-of-Intent requirement in Special Docket cases involving reparations or waiver of undercharges of \$5,000 or less. This change, as commentators assert, will save carriers, shipper, and the Commission substantial and costly paperwork and will protect the shipping public by also requiring that letters of disposition, still required of such cases, will be kept in a public file for three years.

DATES: Effective on May 22, 1985. We will reconsider adoption of the \$5,000 amount in lieu of the \$2,000 amount we proposed if negative comments are filed by May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Donald W. Simmons (202) 275-7358.

SUPPLEMENTARY INFORMATION: This proceeding began with a Notice of Proposed Rulemaking published at 48 FR 2025, January 17, 1983.

Additional information is contained in the Commission's full decision. To purchase a copy of the full decision, contact T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action is taken under the authority of section 207 of the Staggers Rail Act of 1980, 5 U.S.C. 553, and 49 U.S.C. 10321 and 10707.

Elimination of the Letter-of-Intent requirement for cases involving amounts of \$5,000 or less will save carriers some clerical costs and may speed waiver of undercharges and reparations, but will not have a significant economic impact on a substantial number of small entities.

This action will not significantly affect the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1130

Administrative practice and procedure.

Dated: April 12, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Vice Chairman Gradison, joined by Commissioner Strenio, concurred in part and dissented in part, with a separate expression. Commissioner Simmons did not participate.

James H. Bayne,
Secretary.

APPENDIX

PART 1130—[AMENDED]

Title 49, Part 1130, of the Code of Federal Regulations is amended as follows:

§ 1130.2 [Amended]

1. In the first sentence of § 1130.2(e)(1), add the phrase "and the amount involved is more than \$5,000," after the third comma, and before the word "petitions."

2. Add the following new sentences to § 1130.2(e)(1) at the end of the paragraph beginning "If a carrier . . ." is added to read as follows:

* * * If an amount to be waived or refunded is \$5,000 or less, no petition (Letter-of-Intent) need be filed prior to waiver or reparation. However, a Letter of Disposition informing the Commission

of the action taken, the date of the action, the amount waived or refunded, and the date or dates shipments moved shall be submitted to the Special Docket Board, Interstate Commerce Commission, Washington, DC 20423, within 30 days of the waiver or refund. The Letter of Disposition is deemed to be Commission action on a complaint for payment of reparations or waiver of undercharges. Letters of Disposition will be kept in a public file at the Commission for three years. Interested persons may see the file by inquiring at the Special Docket Board, Bureau of Traffic, during normal working hours of the Commission.

3. In the first sentence of § 1130.2(e)(2), the amount "\$2,000.00" is revised to read "\$5,000.00."

[FR Doc. 85-9710 Filed 4-22-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

[Docket No. 41036-4136]

The Fishermen's Protective Act Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fee adjustment.

SUMMARY: The Fishermen's Guaranty Fund under Section 7 of the Fishermen's Protective Act requires fees from participating vessel owners. These fees are used for a vessel seizure compensation program. This notice increases fees for the remainder of this agreement year ending September 30, 1985, in order to pay outstanding and anticipated claims.

EFFECTIVE DATE: April 23, 1985 until September 30, 1985.

FOR FURTHER INFORMATION

CONTACT: Mr. Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Washington, DC 20235, telephone number (202) 634-7496.

SUPPLEMENTARY INFORMATION: The Fishermen's Guaranty Fund under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971-1980) compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by a foreign country's detention of a U.S. fishing vessel based on oceanic rights not

recognized by the United States. Pre-existing agreements are required. Section 7 requires that fees cover program administrative costs and at least 25 percent of claims. The annual fees or adjusted agreement fees are established by The Chief, Financial Services Division, by publication in the Federal Register.

The fee initially established for the current agreement year from October 1, 1984, through September 30, 1985, was \$16 per gross vessel ton for each agreement vessel. Vessel seizure and one very long and expensive vessel detention has since, however, greatly increased Program claims beyond the amount on which the initial fee was based. The fee must now be increased from \$16 to \$38 per gross vessel ton in order to pay outstanding and anticipated claims.

All agreement holders for the current agreement year from October 1, 1984, through September 30, 1985, who wish their agreements to remain in force must submit the increased fee required by this amendment. The increased fee is due on the date this amendment is published in the Federal Register, but is payable in two deferred installments. The first installment, equal to one-half the increased fee, is payable not later than June 1, 1985. The second installment, equal to the other one-half of the increased fee, is payable not later than August 1, 1985. Failure to pay the first installment of the increased fee by the date it is payable will result in termination of agreements retroactive to the date this amendment is published in the Federal Register.

Although Section 7 requires only that fees cover administrative costs and at least 25% of claims, Administration policy requires that fees cover 100% of costs and claims. Consequently, all additional funds now needed are to be generated from this fee increase.

Classification

This action is taken under the authority of § 258.6(b), and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

(22 U.S.C. 1977)

Dated: April 16, 1985.

Will G. Gordon,

Assistant Administrator For Fisheries,
National Marine Fisheries Service.

[FR Doc. 85-9712 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 50, No. 78

Tuesday, April 23, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 21, 30, 39, 40, 51, 70, 71, and 150

Licenses and Radiation Safety Requirements for Well-Logging Operations

Correction

In FR Doc. 85-8340 beginning on page 13797 in the issue of Monday, April 8, 1985, make the following corrections:

1. On page 13799, second column, fourth complete paragraph, twelfth line, "10" should have read "100".

2. On page 13801, first column, tenth line from the bottom, "retained" should have read "retrained".

§ 39.77 [Corrected]

3. On page 13809, first column, in § 39.77(c)(1), third line, "§ 29.15" should have read "§ 39.15".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-11]

Proposed Alteration of Transition Area, Campbellsville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the size of the Campbellsville, Kentucky, transition area to accommodate changes in instrument approach procedures. The Arista radio beacon (RBN), which was previously located on Taylor County Airport, has been relocated to a new site approximately five miles northeast of the airport. This relocation necessitates a change in the instrument approach procedure which serves Runway 23 at

Taylor County Airport and requires cancellation of the instrument approach procedure to Runway 05. These changes in procedures permit the revocation of the existing transition area arrival extension established southwest of the airport and requires increasing the size of the northeast arrival extension. The net effect of these changes will be to raise the floor of controlled airspace from 700 to 1,200 feet above the surface in an area southwest of the airport and to lower the floor from 1,200 to 700 feet in a larger area northeast of the airport.

DATE: Comments must be received on or before June 10, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. —." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing

date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will alter the Campbellsville, Kentucky, transition area by revoking the existing arrival extension southwest of the Taylor County Airport and increasing the size of the northeast arrival extension. The increased size of the northeast arrival extension will provide controlled airspace for aircraft executing a new instrument approach procedure to the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend the Campbellsville, Kentucky, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.181 Campbellsville, KY—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Taylor County Airport (Lat. 37°21'24" N., Long. 85°18'43" W.); within 3.5 miles each side of the 050° bearing from the Taylor County RBN (Lat. 37°24'27" N., Long. 85°14'04" W.), extending from the 6.5 mile radius area to 11.5 miles northeast of the RBN.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983); and 14 CFR 11.65))

Issued in East Point, Georgia, on April 11, 1985.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 85-9676 Filed 44-22-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 85-AWA-18]

Proposed Alteration of Continental Control Area and Restricted Area R-4803 Fallon, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign the internal boundaries of Restricted Area R-4803 North and South, located in the vicinity of Fallon, NV. This action would constitute a minor change in the availability of altitudes within the restricted area during times of use.

DATE: Comments must be received on or before June 5, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-18, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Andy Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3656.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering amendments to § 71.151 and § 73.48 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to realign the internal boundaries of Restricted Area R-4803 North and South, located in the vicinity of Fallon, NV, and adjust the Continental Control Area accordingly. The external boundaries of R-4803 will remain the same. This action would change the availability of altitudes within Restricted Area R-4803 North and South during actual times of use. Sections 71.151 and 73.48 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Restricted areas, Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.151 and § 73.48 of Parts 71 and 73 of

the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

§ 71.151

R-4803 Fallon, NV—[Revoked]

R-4803S Fallon, NV—[New]

§ 73.48

R-4803 Fallon, NV—[Revoked]

R-4803N Fallon, NV—[New]

Boundaries. Beginning at lat. 39°34'53" N., long. 118°59'36" W.; to lat. 39°35'48" N., long. 118°53'14" W.; to lat. 39°28'48" N., long. 118°51'03" W.; to lat. 39°30'00" N., long. 118°58'30" W.; to the point of beginning.

Designated altitudes. Surface to 8,000 feet MSL.

Time of designation. 0600 to 2400 local time, daily.

Controlling agency. FAA, Oakland ARTCC
Using agency. Commander, Flight Attack Wing Pacific, USN, NAS Lemoore, CA

R-4803S Fallon, NV

Boundaries. Beginning at lat. 39°30'00" N., long. 118°58'30" W.; to lat. 39°28'48" N., long. 118°51'03" W.; to lat. 39°23'13" N., long. 118°50'10" W.; thence via the arc of a 3 NM radius circle centered at lat. 39°20'40" N., long. 118°52'15" W.; to lat. 39°20'07" N., long. 118°56'03" W.; to the point of beginning.

Designated altitudes. Surface to 18,000 feet MSL.

Time of designation. 0600 to 2400 local time, daily.

Controlling agency. FAA, Oakland ARTCC
Using agency. Commander, Light Attack Wing Pacific, USN, NAS Lemoore, CA

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on April 15, 1985.

John W. Baier,

Acting Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 85-9875 Filed 4-22-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21959; File No. S7-17-85]

Request for Comments on the Oversight of the U.S. Government and Agency Securities Markets

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Commission is seeking comments on the U.S. government and agency securities markets and dealers, in order to determine, in consultation with the Treasury and the Federal Reserve Board, whether legislative or

regulatory initiatives are necessary to address the problems posed by recent failures of government securities dealers; and if so, the most practical, cost-effective form of such rules and regulations.

DATES: Please respond no later than May 20, 1985. Your prompt response is appreciated. The Commission intends to hold a public meeting on May 23, 1985 where representatives of the government securities markets will have an opportunity to discuss the issues posed in this release.

ADDRESS: Please file five copies of your comments with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Refer to File No. S7-17-85. All comments will be available for review at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, (202) 272-2388, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549

SUPPLEMENTARY INFORMATION:

Executive Summary

The Problem: Over the past seven years, the widely publicized failures of several small government securities dealers, including within the past month E.S.M. Government Securities, Inc. ("ESM") and Bevil Bresler & Schulman Asset Management Corp. ("BBS"), have had repercussions throughout the financial markets.

The SEC estimates that over \$500 million of losses have been sustained by the firms and institutions, that dealt with ESM and BBS. Such losses have been attributed principally to: fraudulent concealment of ESM's and BBS's financial conditions; their use of the same collateral for multiple transactions; and in the case of ESM, over \$200 million of its \$300 million of losses have been attributed to transactions with thrift institutions which the receiver has alleged were under the control of the same individual. Additional losses were sustained by individuals, including taxpayers and employees of municipalities and the customers of 71 Ohio thrift institutions who lost access to their funds.

The Market: The annual dollar volume of trading in U.S. government and agency obligations is over 15 times that of all U.S. securities exchanges and over-the-counter markets. It is by far the world's largest and most efficient securities market. It is of paramount importance to the effective, low cost financing of the national debt as well as

administration of the nation's fiscal and monetary policies. In addition, the government securities markets are important to the other nations that use U.S. dollars and government securities for their reserves and as a medium of international exchange; as well as to commercial enterprise throughout the free world.

The Regulatory Structure: There are 38 primary government securities dealers that report to the Federal Reserve Board ("FRB") on a daily, monthly, and annual basis; and an unknown number of secondary dealers, whose government securities transactions are largely unregulated although 27 report to the FRB on a monthly basis. These firms primarily deal with institutions as opposed to individuals, although these institutions have varying degrees of sophistication. Representatives of the FRB have indicated that it intends to adopt voluntary capital adequacy guidelines for dealers not otherwise subject to federal regulation.

Neither the FRB nor the SEC has specific statutory authority over those firms that deal exclusively in government securities. Nevertheless, the vast majority of secondary market government securities transactions are handled by primary dealers subject to monitoring by the FRB; banks subject to the jurisdiction of the FRB, the Comptroller of the Currency and/or the FDIC; or registered broker-dealers subject to inspection and regulation by the SEC and self-regulatory organizations. The SEC also has the authority to sanction these firms and anyone else that engages in fraudulent securities activities.

The Question: Can losses in the government securities market be inhibited, reduced or prevented in the future? How can that be done on a cost-effective basis? The rationale and factual basis for your response to those questions of which you have special knowledge or experience is requested. Some of the key questions are summarized below.

How widespread are these problems? Are the underlying practices of double collateralization and demanding excess margin common among government securities dealers? If so, is there a significant risk of other government securities dealers failing?

What is the reaction in the marketplace to the widely publicized ESM and BBS failures? Are those who deal in the government securities market now properly perfecting their collateral? Are they shifting from small to large dealer? Are there likely to be more

failures as a result of investor reactions to the ESM and BBS failures?

If greater regulation is necessary, which of the following alternatives would be the most cost-effective? Which would maximize investor protection and reduce or eliminate mistakes and deceptions at the least cost?

Should dealers be required to deliver through the FRB's or other book-entry systems, government securities that are transferred, or pledged under repurchase agreements?

Should the FRB's proposed voluntary capital-adequacy guidelines for government dealers be made mandatory? Should those guidelines be expanded to include voluntary registration and segregation of customer positions subject to audit and inspection by the FRB?

Should there be direct regulation of government securities dealers by the FRB or the SEC? Or should a self-regulatory organization be created under the aegis of the SEC—or the FRB? Or should the authority of the Municipal Securities Rulemaking Board, under the SEC's oversight, be expanded to include government securities markets and dealers? What responsibilities and authority should the SRO have? In particular, should the SRO's authority be limited to imposing financial and operational requirements or should it also be authorized to regulate the business practices of government securities dealers?

As a result of the losses incurred in ESM and BBS, Congressional committees have requested the Commission's recommendations of cost-effective means to reduce, inhibit, or prevent such losses in the future. The Commission is, therefore, seeking comment on the current functioning of the market for government securities and possible regulatory and other initiatives. In view of the broad range of the questions, commentators are not expected to respond to all of them, but factual responses and estimates within commentators' areas of expertise or experience are respectfully requested.

I. Introduction

A. The Governments and Government-Related ("Agency") Securities Markets

The market in U.S. government and agency securities is by far the largest and most efficient securities market in the world. The monthly trading volume of just the 36 primary government dealers that report to the FRB amounts to over \$1.5 trillion¹—or approximately

15 times the total volume of all transactions in corporate securities traded on all the nation's securities exchanges and over-the-counter markets.² In the government market, the "spread" between bid and asked prices and the brokerage commissions are a fraction of those in other securities markets.

Individuals hold nine percent of U.S. government obligations. Much of the remainder is held by a wide variety of institutions including municipalities, corporations, and pensions funds.³ Most of the dealers that participate in the original issue and resale of these securities to institutional investors maintain active ongoing secondary markets for these securities.

In the Treasury securities market a system of "primary" and "secondary" dealers exists. "Primary dealers" are those dealers with whom the FRBNY is willing to deal directly in conducting its open market operations to implement the FRB's monetary policy. The FRBNY regards the primary dealers as the principal market makers in the secondary market. At present there are 36 primary dealers in Treasury securities, of which 13 are banks, 12 are broker-dealers registered with the Commission, and 11 are unregistered dealers.

Primary dealers are expected to bid for a substantial share of Treasury securities in Treasury auctions⁴ and

make continuous markets in these securities. In addition, they are required to submit daily, monthly, and annual reports to the FRBNY showing their transactions, positions, and capital; the FRBNY monitors the activity and financial soundness of these primary dealers through these reports and by frequent contacts through telephone calls and on-site visits.

In addition to these primary dealers, there are a larger number of secondary dealers that trade Treasury securities but do not deal directly with FRBNY. The number of these secondary dealers is unknown although officials of the FRB have estimated there may be 200 or more government securities dealers.⁵ The FRBNY has encouraged secondary dealers to report on a monthly basis information similar to that provided by primary dealers. As of April 1985, 27 non-bank secondary dealers⁶ were voluntarily reporting this information.⁷ In addition to directly monitoring primary dealers and encouraging secondary dealers to report voluntarily, the FRBNY has indicated that it intends to adopt shortly voluntary capital adequacy guidelines for Treasury securities dealers not otherwise subject to federal regulation.⁸

These oversight activities depend largely on voluntary compliance and moral suasion, and, for the primary dealers, the ultimate threat of the FRBNY ending a firm's primary dealer status. The FRBNY has no statutory

1985, Table FD-2, at 15 ("Treasury Bulletin"). Of this debt, \$1.247 trillion was in marketable Treasury securities. Government agency debt (e.g., Government National Mortgage Association ("GNMA") securities) outstanding totalled \$35 billion and government-sponsored agency debt (e.g., Student Loan Marketing Association ("SLMA") Securities) outstanding totalled \$224.3 billion in October 1984. Board of Governors of the Federal Reserve System, *Federal Reserve Bulletin*, March 1985, Table 1.44, at A-33, ("Federal Reserve Bulletin").

² In 1984, dealers reporting to the Federal Reserve Bank of New York ("FRBNY") reported transaction volume averaging \$52.7 billion daily in Treasury securities and \$7.8 billion daily in agency securities. *Federal Reserve Bulletin*, *supra* note 1, Table 1.42, at A-31. In contrast, the daily dollar volume of trading in 1984 on all United States stock exchanges and the NASDAQ over-the-counter market averaged only \$4.5 billion. Based on SEC Statistical Review, February 1985, Table M-110, and NASD 1984 Annual Report. These figures are used for illustrative purposes only; they cannot be directly compared because of differences in the way dollar volume is calculated in these markets.

³ See *Treasury Bulletin*, *supra* note 1, Table OFS-1: 2, at 31. In December 1984, private investors held 72% of the outstanding Treasury securities, including 8.7% held by individuals. The remaining share of this debt was held by United States Government accounts and Federal Reserve Banks. *Id.*

⁴ The Treasury Department, through the Federal Reserve Banks, sells marketable Treasury securities to the public through an auction process. These securities are bought directly at auction primarily

by dealers but also by investors. *Report of the Joint Treasury-SEC-Federal Reserve Study of the Government-Related Securities Markets* (December 1980) at 37 ("Government-Related Securities Report").

⁵ The Commission specifically requests commentators to provide estimates of the number of secondary dealers active in these markets at present; their aggregate positions; and the annual dollar transaction volume of their transactions.

⁶ The agency securities market is not differentiated into primary and secondary dealers. While many of the dealers in Treasury securities also make markets in agency securities, the precise number of dealers in this market also is unknown. Information concerning the size, nature, and number of dealers in this market would be appreciated.

⁷ Comment is requested on the efficacy of these reporting requirements. In this regard, it should be noted that ESM was a reporting dealer.

⁸ FRBNY, *Capital Adequacy Guidelines for U.S. Government Securities Dealers. Request for Comments* (February 7, 1985). These guidelines would require that a dealer in Treasury securities keep the size of its risk consistent with the amount of liquid capital available to absorb losses. While compliance would be voluntary, the FRBNY would require primary dealers, and strongly encourage other dealers, clearing and lending banks, and customers to deal only with firms who have been certified by their auditors as complying with these guidelines. The FRBNY also would encourage other bank supervisors to look for certification letters in examining bank clearing and lending activities for Treasury securities accounts.

¹ Office of the Secretary, Department of the Treasury, *Treasury Bulletin*, 1st Quarter, Fiscal

investigation or enforcement authority over these dealers. However, 25 of the 36 primary dealers, and approximately half of the 27 secondary dealers voluntarily reporting to the FRBNY, are regulated by one or more bank regulatory agencies or the SEC.

The Commission similarly has no direct statutory authority over the government securities markets. Government securities are exempt from the registration provisions of the Federal securities laws,⁹ although transactions in such securities are subject to the anti-fraud provisions of these laws.¹⁰ Broker-dealers who effect transactions exclusively in government securities are exempt from the broker-dealer registration provisions of the securities laws. However, those that also effect transactions in corporate or municipal securities must register with the Commission.¹¹ The government securities activities of registered broker-dealers are subject to Commission financial responsibility, recordkeeping, reporting, and other regulations.

In addition to the informal oversight activities of the FRBNY for primary dealers in the government securities area, all activities of banks, including their government securities activities and investment practices, are subject to the direct regulatory oversight of the appropriate regulatory authority for the bank (the FRB, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation). Moreover, the investment activities of many institutional entities in the government securities market are subject to review by regulatory bodies that supervise them. For instance, the FHLBB provides regulatory oversight over savings and loan associations and other thrift institutions, the National Credit Union Association ("NCUA") over credit unions, the Department of Labor over pension funds, and state insurance

commissions over insurance companies.¹²

Overall, the government securities markets function efficiently under the present regulatory framework.¹³ A number of developments in recent years, however, have placed increased pressure on these markets. The most significant of these developments is the increasing amount of government debt required to be financed each year. In addition, the volatility of interest rates at times in recent years has greatly increased the market risks of taking positions in government securities.¹⁴ These risks are exacerbated by virtue of the complexity and high degree of leverage possible in the government securities markets through the use of repurchase agreements.¹⁵

Moreover, despite the importance of the government securities markets for the nation's financial system, entry into these markets as a dealer, with its potential impact on other participants, is relatively simple. In the absence of dealer registration and capital requirements, it is possible to go into business as a government securities dealer with a minimum of capital or experience.¹⁶ However, the interconnected nature of the market may cause the misfeasance or failure of even a small firm to have repercussions disproportionate to its size. Furthermore, the nature of the investors in the market may cause any such failure to have widespread consequences throughout the financial system.

⁹ For an account of this oversight for government securities, see generally *Government-Related Securities Report*, *supra* note 4, at 176-204.

¹⁰ See, e.g., Statement of E. Gerald Corrigan, President, FRBNY, before the Subcommittee on Domestic Monetary Policy of the House Committee on Banking, Finance and Urban Affairs (April 1, 1985), at 12 ("the market as a whole continues to function effectively in fair weather or foul").

¹¹ The development of a variety of financial futures and options, such as futures on Treasury bonds, has enabled market participants to hedge against these increased derivative risks. At the same time, these instruments also can be used themselves to assume highly leveraged unhedged positions that can carry substantial risks.

¹² The term "repurchase agreement" refers to an agreement to sell securities subject to a commitment to repurchase from the same person securities of the same quantity, issuer, and maturity. See Rule 15c3-1(c)(2)(iv)(F)(9) under the Exchange Act.

¹³ Illustrative of the ease of entry into the government securities markets is the case of Eldon Miller. After operating Miller Truck and Sales Service in Iowa, in the early 1970's Miller renamed his company Financial Corporation and in January 1974 opened an office on Wall Street. Starting with \$400,000 in capital, by July 1975 Financial Corporation held \$1.9 billion in assets, but approximately \$16 million more than that in liabilities. The court declined to issue an injunction against Miller although it found that Miller had violated Rule 10b-5 under the Exchange Act. *SEC v. Miller*, 495 F. Supp. 465 (S.D.N.Y. 1980).

B. Problem Incidents in the Government Securities Markets

Over the past seven years, there have been a number of highly publicized failures or near-failures involving unregistered government securities dealers, most of which have been affiliates of registered broker-dealers. These include Winters Government Securities (1977), Hibbard & O'Connor Government Securities (1979), Drysdale Government Securities (1982), Lombard-Wall (1982), Lion Capital (1984), and most recently ESM and BBS (1985). These incidents have involved market participants that have engaged in highly speculative, and in some instances, fraudulent trading activities in government securities. The failure or near failure of these firms has resulted in losses totaling hundreds of millions of dollars with broad, and even international,¹⁷ repercussions. These failures underscore the dangers of problem incidents to other participants in these markets and to public confidence in these markets generally.

The two recent failures of ESM and BBS exemplify the problems that have arisen and their potential effects. The failure of ESM in March 1985 allegedly resulted in losses to investors involved in repurchase and reverse repurchase transactions with ESM of over \$300 million.¹⁸ It also resulted in the failure of a privately insured Ohio savings bank. ESM, an unregistered government securities dealer, allegedly failed for over five years to reflect in its financial statements the fact that it had incurred substantial losses from trading reverses and high expenses incurred by the firm. ESM allegedly was able to continue operating despite these losses because of its inaccurate financial statements; transactions with two thrift institutions, which the receiver has alleged to be under the control of the same individual, that essentially funded a large portion of ESM operations; and because ESM customers were not adequately collateralized in their transactions.¹⁹

The April 1985 bankruptcy of BBS, and unregistered government securities dealer, may result in losses to customers, mostly savings and loan associations and banks that had engaged in repurchase and reverse repurchase transactions with BBS, of as

¹⁷ *Foreign Currencies Gain on Troubles at Bevil Bresler*, Wall Street Journal, April 9, 1985, at 50.

¹⁸ These are estimated losses without consideration of tax consequences, insurance, and civil suit recoveries, if any.

¹⁹ *Report on the Condition of the ESM Companies* by Thomas Tew, Receiver, *Sec. v. ESM Group et al.*, Case No. 85-61-90-Civ-Gonzalez, In the U.S. District Court (S.D. Fla.) April 2, 1985.

⁹ Sections 3(a)(2) of the Securities Act of 1933 (the "Securities Act") and 3(a)(12) of the Securities Exchange Act of 1934 (the "Exchange Act") define government securities as exempt for purposes of the registration and periodic reporting provisions of these Acts.

¹⁰ Sections 17(a) of the Securities Act and 10(b) of the Exchange Act, and Rule 10b-5 thereunder, apply to the offer, purchase, or sale of any securities. As a result, these sections apply to government securities. While the Commission lacks statutory authority to examine regularly sole government securities dealers, it may conduct investigations to determine whether these firms have violated the anti-fraud provisions.

¹¹ Section 15(a)(1) of the Exchange Act. In addition, exclusive government securities broker-dealers are not required to become members of a self-regulatory organization ("SRO") under the Commission's oversight.

much as \$233 million.²⁰ BBS allegedly provided financing for a related government securities dealer which has incurred large trading losses. BBS allegedly also engaged in loans with an affiliate, a registered broker-dealer. BBS allegedly was able to continue operating, in part, because customers were not adequately collateralized. Apparently as a direct result of BBS' failure, Bevell, Bresler & Schulman, a registered broker-dealer affiliate of BBS; Brokers' Capital (and an affiliated futures commission merchant); and Collins Securities, Inc., another registered broker-dealer, either have been enjoined from or voluntarily have ceased doing business. Losses with respect to Brokers' Capital and Collins Securities, Inc. have been estimated to be less than \$5 million.

II. Discussion

The failures of ESM and BBS, coming after the series of other incidents involving small, unregulated government securities dealers, have raised concerns about the possible adverse effects of these incidents on confidence in the government securities markets. The failures have also raised questions about whether there is a need for corrective action with respect to participants in these markets. At hearings on March 21, 1985 before the Telecommunications, Consumer Protection and Finance Subcommittee of the House Energy and Commerce Committee, the Commission indicated it would consult with the FRB and the Treasury and advise Congress within 90 days on whether additional regulation is needed and if so the most cost-effective approaches.

In responding to the specific matters discussed below, the Commission requests that commentators bear in mind the following three general considerations. First, because of the importance of the government securities markets to the monetary and fiscal policies of the nation, it is crucial to ensure their continued efficient operation. Maintaining or, if possible, improving the efficiency of these markets is of paramount importance. Accordingly, the Commission requests that commentators, in responding to the specific questions raised by the Commission, attempt to address the effects of possible regulatory actions on the ability of the Treasury and FRB to fund the public debt and execute the nation's monetary policy in the most efficient and least costly manner

possible. In particular, commentators are asked to provide information about the costs and benefits of increased regulation to the Treasury Department and other entities issuing government securities.

Second, and evaluation of regulatory alternatives for the government securities markets must carefully consider the costs of that regulation as well as the potential benefits to investor protection, market efficiency, and investors' confidence that additional regulation might provide. While such a cost-benefit analysis is an important element in any regulatory initiative, it is particularly critical in the government securities markets because of size and importance of these markets. For example, one cost of government securities dealers failures could be the withdrawal from the market of a substantial number of investors. On the other hand, such failures could induce a "flight to quality" in which investors deal only with more established firms. Thus, in evaluating the specific issues discussed below, commentators are requested to identify and quantify to the extent possible the costs and benefits of taking further regulatory action, as well as declining to take further action.

Third, the regulation by the Commission and the SROs of non-exempt securities broker-dealers generally has operated effectively. While no system is fool-proof and there have been some major failures of regulated broker-dealers, the Commission believes that the regulatory system for registered broker-dealers promotes investor protection. It deters fraud and permits earlier detection of fraudulent activities. Nevertheless, there are a number of differences in the customers and activities of government securities dealers and broker-dealers presently regulated by the Commission. Broker-dealers currently registered with the commission generally deal directly with individual investors as well as institutions; whereas government securities dealers deal primarily with other dealers and corporate, municipal, and institutional investors.

In responding to the specific questions raised below, the Commission requests comment on the relevant similarities and differences between the activities of government securities dealers and registered broker-dealers.²¹ In this

regard, as the BBS case illustrates, activity in the government securities markets can have repercussions for related registered broker-dealers and their customers. Hence, commentators also are requested to discuss the impact on the corporate and municipal or other securities markets of taking regulatory action, and declining to take such action, in the government securities area.

The Commission has divided its specific questions into two general categories: (1) Issues relating to the costs and benefits of further federal regulation of government securities dealers and the structure that any such regulation should take; and (2) if further regulation of government securities dealers is considered necessary, the specific areas that should be regulated. In addition, the Commission invites commentators to address any other issues they believe to be important.

A. Costs and Benefits of Regulatory Alternatives

Possible responses to recent problems range from working within the present regulatory framework to creating an SRO for government securities dealers, perhaps coupled with registration with, and regulation by, one or more federal agencies.

1. *Responses by the Private Sector and Regulators of Investors.* One approach would be to rely primarily on responses by the private sector, and possibly regulators of institutions that invest in that market, to meet the problems raised by the recent failures. In that connection, how effectively is the marketplace responding to the widely publicized problems of ESM and BBS? Please describe steps that are being taken. Abuses involving GNMA standby contracts in the late 1970's dissipated when the less sophisticated institutional investors who had engaged in transactions in standbys substantially reduced their participation in that market. In addition, the NCUA, FHLBB, and bank regulatory agencies each adopted guidelines or rules intended to limit the activities of regulated institutions in standbys and forwards.²² Similarly, the losses incurred

²¹ The Commission also requests specific comment on which market participants should be considered as dealers in government securities, and how this universe should be defined. The Exchange Act's definitions of "dealer" (Section 3(a)(5)) and "municipal securities dealer" (Section 3(a)(30)) turn on whether a person buys and sells securities as part of a regular business. This language has been

interpreted to distinguish between professional investors and market makers. Commentators should consider whether this type of distinction is feasible in a market where large positions may be taken for cash management purposes as well as to generate trading profits.

²² See *Government-Related Securities Report*, *supra* note 4, at 176-204.

²⁰ These are estimated losses without consideration of tax consequences, insurance and, civil suit recoveries, if any.

in the Drysdale failure were largely the result of a failure by investors to account for accrued interest on securities loaned to Drysdale, a shortcoming that has since been corrected by standard industry practices.²³

In both ESM and BBS, it appears that investors incurred substantial losses because they were not properly collateralized. This apparently occurred because investors failed to take all the measures necessary to assure adequate possession or control of their collateral. This also was alleged to have resulted from fraud and deception on the part of the government securities dealers (and perhaps their registered broker-dealer affiliates) involved in these failures. With respect to ESM, substantial losses also were incurred by two institutions, apparently controlled by the same individual, which provided ESM with excessive margin. The Commission requests comment on the private sector's response to these failures. What steps have dealers, including secondary dealers, taken to respond to these failures? In addition, are investors that do business with government securities dealers taking actions to ensure that their transactions are properly collateralized? Are they more actively auditing their collateral when it is held in custody by a government securities dealer? If so, how could such an auditing task efficiently be carried out? Have the recent failures resulted in a "flight to quality" with investors transferring their repurchase activities to larger, better known dealers.

Commentators who believe there has been or will be significant private sector response to ESM and BBS are requested to discuss whether this response reduces the risk of future frauds of a similar magnitude. At the same time, commentators are also requested to address whether one cost of a solely private response to government securities dealer failures is the withdrawal from the market of a substantial number of investors and whether any such withdrawal may adversely affect the government securities markets on a short and long term basis.

2. Collateralization. An alternative approach would be legislation or additional regulation requiring government securities dealers or customers to take steps to ensure that such transactions, including repurchase agreements, are properly collateralized, possibly through electronic book-entry

systems. This approach would reduce the risk of a dealer using the same collateral to secure more than one transaction. The Commission requests comment on the feasibility of and the expenses associated with such collateralization of both long and short term transactions. Those who incurred losses in ESM and BBS apparently were primarily, if not entirely, dealing in long term transactions.

The Commission understands that the charge to an institutional investor of a Treasury securities movement over the Fed wire is approximately \$38. In this connection, the Commission requests comment on the costs to investors of transfer of a Treasury securities position, and the receipt, custody, and examination of a position in a safekeeping account for the benefit of customers.

The Commission also requests comments on the costs of collateralizing GNMA securities which are presently not included in a book-entry system. Some government securities dealers have indicated that the cost to transfer GNMA securities could be as high as \$20 per pool, and noted that the delivery of a round lot (one million dollars) of GNMA securities may involve up to three pools. The Commission also requests comments on any operational problems in collateralizing GNMA transactions.²⁴

In addressing the costs entailed in a collateralization requirement, commentators should distinguish between the costs for overnight and term repurchase agreements. In this connection, the Commission notes that the collateralization abuses occurring in ESM and BBS apparently involved term repurchase agreements. Comment is requested as to whether there is a similar risk of abuse in overnight repurchase agreements. Finally, comment is requested as to the need to impose any collateralization requirement on banks or regulated broker-dealers already subject to examinations and segregation requirements.

Also, please consider possible alternatives to collateralization, such as a requirement that a dealer segregate its customers' collateral. Would the viability of such a customer segregation requirement depend on an auditor's examinations, or the ability of the customer or a regulatory body to inspect or externally audit the dealer's accounts? Evaluation of possible means of providing such an external check is

requested.²⁵ Comment also is requested on whether it is necessary or appropriate for the regulators of institutional investors to adopt rules to ensure that they follow such protective measures.

3. Expansion of Statutory Disqualification Provisions. Another approach which could be used alone or in conjunction with others approaches would be to expand the present authority to suspend or bar securities market participants. Currently, SROs under the Commission's jurisdiction are empowered to deny membership to a broker-dealer registered with the Commission and bar any person from becoming associated with a registered broker-dealer who is subject to a statutory disqualification.²⁶ The SRO must file with the Commission a notice within 30 days if it knows, or in the exercise of reasonable care should have known, that it has admitted into membership a person subject to a statutory disqualification or allowed a person subject to a statutory disqualification to become associated with a member.²⁷

The Commission notes that, to some extent, the recent problems in the government securities markets appear to have resulted from certain persons connected with one troubled dealer later moving to another dealer which subsequently encountered difficulty. Accordingly, comments are requested on the possibility of extending the review of persons subject to a statutory disqualification to cover all dealers, including currently unregistered government securities dealers. Please also comment on whether such a review is feasible without registration and examination of government securities dealers to enforce such provisions; and

²³ The Commission also seeks comments on whether specific measures such as the expansion of book-entry systems in government securities would be useful in ensuring that investors can obtain adequate collateralization in connection with repurchases and similar short-term transactions. In this connection, the Commission seeks comment on whether adequate collateralization would protect investors from abuses apart from possible dealer insolvency, or whether some additional guidelines or regulations directed towards dealers engaged in a government securities business might be necessary. See *infra* notes 26-33, 37-66 and accompanying text.

²⁴ Section 6(c)(2) and 15(a)(g)(2) of the Exchange Act. See also section 15B(c)(4) of the Exchange Act. The term "statutory disqualification" is defined broadly in Section 3(a)(39) of the Exchange Act to include, among other things, persons: expelled, suspended from membership in, or barred from association with, a member of an SRO; subject to a Commission order suspending or revoking broker-dealer registration; or who have violated the federal securities laws.

²⁵ Rule 19b-1 under the Exchange Act.

²⁶ See, e.g., Public Securities Association, *Business Practice Guidelines for Participants in the Repo Market* (October 1982).

²⁷ For a discussion of automated systems for the transfer of government-related securities, see *infra* notes 48-49 and accompanying text.

discuss whether this additional oversight would be effective as the only additional regulation of government securities dealers, or whether it could best be utilized in conjunction with other regulatory initiatives.

4. Expansion of FRBNY Guidelines. An alternative regulatory approach could be the use of voluntary guidelines governing the conduct of firms engaged in a government securities business. For example, the FRBNY's proposed voluntary capital adequacy guidelines could be expanded to establish standards in other areas such as the segregation of customer securities and the maintenance of complete books and records. Alternatively, voluntary guidelines could be adopted by a relevant industry group. The FRBNY's proposed voluntary guidelines rely on pressure to comply from customers, and indirectly, from regulatory agencies requiring supervised institutions to ensure compliance by the firms with whom they deal. Complying firms would obtain certification of compliance by an independent public accountant, thus providing customers with a basis on which to choose the firms with which to deal.

The Commission seeks comments on whether voluntary guidelines for government securities dealers could adequately protect investors and maintain the integrity of the government securities markets. In this connection, it would be useful if commentators would assess the potential cost-effectiveness of the FRB's current reporting program for secondary dealers and the proposed voluntary compliance program, as well as whether the voluntary standards could be enhanced by voluntary inspections, perhaps by a federal agency or a relevant industry group, auditing of all affiliates by a single auditor, or certification by auditors of internal controls as well as financial statements. In order to be effective would it be necessary for such standards to be mandatory?

5. Creation of a Self-Regulatory Organization. Another oversight approach would be the creation of an SRO for government securities dealers. Important issues include: whether such an SRO should have rulemaking power only or also have inspection and enforcement powers over members;²⁸

and whether membership in such an SRO should extend to all government securities dealers, or be limited to non-bank dealers or unregistered firms that deal solely in government securities. Any regulatory scheme for oversight of government securities dealers must recognize the important role of the primary dealers in the auction process and the FRBNY open market operations, as well as the unique oversight role of the FRBNY with respect to the primary dealers. Accordingly, comment is sought on whether the primary dealers should be exempted from SRO membership or subject to a more limited form of SRO oversight.

A government securities SRO could be a separate, limited SRO, modeled after the MSRB; or could be an expansion of the MSRB to include responsibility for regulation of the government securities market.²⁹

A limited SRO which had rulemaking but not inspection or enforcement authority could take several forms. The form most similar to the MSRB could have rulemaking authority over all government securities dealers, including banks and dealers registered with the Commission. Inspection and enforcement authority could repose in the bank regulators for bank dealers, the FRBNY for primary dealers, and the NASD or the New York Stock Exchange ("NYSE") for non-bank dealer members.

A second form of SRO could be limited to adopting rules applying to government securities dealers not regulated by any other SRO or agency. It would not govern the government securities activities of registered bank dealers and registered broker-dealers. Enforcement and inspection authority over unregistered government securities dealers could be delegated to the NASD or the NYSE.

Alternatively, a government securities SRO could be given fully integrated rulemaking, inspection, and enforcement authority like that of the NASD and the

the Exchange Act to adopt rules governing transactions by brokers, dealers, and municipal securities dealers, subject to Commission approval. The MSRB is divided evenly among representatives of dealer banks, securities firms, and the public. Responsibility for ensuring compliance with MSRB rules, however, rests primarily with bank regulators for dealer banks and the NASD for registered broker-dealers. In contrast, the NASD and the national securities exchanges have integrated rulemaking, inspection, and enforcement authority subject to Commission oversight, over registered broker-dealers and member firms, respectively. The Commission also has enforcement and inspection authority over the entities subject to SRO rules.

²⁸ This is the approach taken in the Public Securities Act of 1985, introduced on April 15, 1985 by Congressman John Dingell and several other cosponsors in the House of Representatives. See H.R. 2032, 99th Cong., 1st Sess. (1985).

national securities exchanges. This integrated approach may provide greater consistency between rulemaking and rule enforcement and permit consolidation of expertise in a single entity. On the other hand, an integrated SRO for all government securities dealers might be duplicative in part.³⁰

Another approach which could be used alone or in conjunction with the creation of an SRO for currently unregulated government securities dealers would be to expand the jurisdiction of an existing SRO to include government securities dealers. For instance, all or certain government securities dealers could be brought within the purview of the MSRB, the NASD, or the national stock exchanges. This approach could include a requirement that subsidiaries of registered broker-dealers be combined with the registered broker-dealer or that broker-dealer audits and inspections extend to government securities dealer subsidiaries. Such an approach might substantially reduce the start-up costs of a government securities SRO. Because these SROs are not presently oriented toward government securities, however, they might have to revise their organizational structures and examine the applicability of their rules in order to regulate effectively government securities dealer activities.³¹

The Commission asks commentators to evaluate the cost-effectiveness of these various forms of self-regulation. Comment is sought on whether self-regulation is appropriate for the government securities markets on the whole, and whether the benefits from uniform rulemaking for the government securities industry would outweigh possible costs of compliance.³²

³⁰ The Commission requests that commentators discuss whether an integrated SRO might nevertheless be appropriate for sole government securities dealers which, if they are not primary dealers, currently are not subject to any form of regulation. The principal advantage of the limited SRO model is that it avoids creating an additional inspection and enforcement structure for currently regulated entities.

³¹ The Commission also notes that, pursuant to section 17(d)(1) of the Exchange Act and Rule 17d-1 thereunder, the Commission has the authority to allocate authority to SROs in areas of potential overlap. The Commission requests comment on whether, if government securities regulation is accomplished through an SRO, the Commission should use its authority under this section to allocate regulatory responsibilities. It also should be noted that, under Rule 17d-2, SROs can agree to allocate responsibility for examining dual members' compliance with SRO and Commission requirements to one of the SROs.

³² In this connection, the *Government-Related Securities Report* attempted to assess the costs of an SRO approach. See *Government-Related Securities Report*, *supra* note 4, at 232-234.

²⁸ At present there are two basic types of SROs: Those with rulemaking authority only, such as the Municipal Securities Rulemaking Board ("MSRB"); and integrated SROs with rulemaking, inspection, and enforcement authority, such as the National Association of Securities Dealers, Inc. ("NASD") and the national securities exchanges. The MSRB's fifteen-member board with expertise on municipal securities has authority under section 15B(b)(2) of

Commentators also should assess whether subjecting less than all dealers to self-regulatory oversight might unfairly burden the firms subject to this oversight by creating regulatory disparities. Comment is also requested as to whether any of the other possible SRO models may have adverse competitive effects on any sector of government securities dealers.

6. Direct Federal Regulation. A further alternative is increasing the direct federal role in regulating the government securities markets. Government securities dealers could be required to register directly with the Commission, as is currently required of registered broker, dealers, and municipal securities dealers, the FRB, or some other entity, and be directly subject to federal regulations concerning financial responsibility and other subjects discussed below.³³ Another possibility would be to give to the FRB the direct ability to regulate the government securities market, thus strengthening its present informal oversight activities. This alternative could operate separate from or in conjunction with other approaches to overseeing the government securities market.

7. Federal Oversight. A further issue raised by the consideration of additional regulatory structures is what form of ultimate federal oversight should exist. One approach could be for either the Commission or the FRB to have sole oversight authority over a government securities SRO or other regulatory structure. The Commission and the FRB each have experience in different areas that might pertain to such an SRO or regulatory structure. The Commission has substantial experience in overseeing a variety of securities SROs, including the MSRB, the NASD, and the national securities exchanges. It is the appropriate regulatory authority for broker-dealers, and is charged with responsibility for administering the federal securities laws. In that capacity, it currently has anti-fraud authority over participants in the government securities markets. The FRB has substantial expertise with respect to the government securities markets. The FRBNY already is active in monitoring closely the activities of primary dealers, receives information from other dealers on a voluntary basis, and is responsible for implementing national monetary policy through transactions in government securities. Accordingly, the Commission seeks comment on the appropriateness of sole FRB or Commission oversight.

Another possibility would be joint supervision of an SRO by the Commission, the FRB, and the Treasury. This approach was proposed in the *Government-Related Securities Report*. This oversight could operate either directly through a joint council or through consultation procedures similar to those in clearing agency regulation under section 17A of the Act³⁴ or between the Commission and the Commodity Futures Trading Commission under the Commodity Exchange Act ("CTFC-SEC Accord model").³⁵ The Commission solicits comment on the relative advantages of these various oversight approaches.

B. Areas of Regulation

In conjunction with determining whether further federal oversight of the government securities market would be cost-effective, comments are requested on the areas such regulation should cover. In its regulation of brokers, dealers, and municipal securities dealers (both directly, and through its oversight of the SROs), the Commission in the past has developed and reviewed regulations in three general areas: (1) financial and operational regulation; (2) professional qualification regulation; and (3) business practices regulation.³⁶

1. Financial and Operational Regulation. The cornerstones of the Commission's financial regulation of brokers and dealers are the Net Capital Rule³⁷ and the Customer Protection

Rule.³⁸ The primary objective of the Net Capital Rule is to ensure the liquidity of a broker-dealer to enable it to meet its obligations promptly. The Customer Protection Rule has two principal objectives: (1) To require a broker or dealer to obtain promptly, and thereafter maintain, possession or control of customers' fully paid and excess margin securities;³⁹ and (2) to require brokers and dealers to deposit, in effect, excess customer monies in a special reserve bank account for the exclusive benefit of such customers.⁴⁰

The Commission requests comment on whether this type of financial regulation should be applicable to government securities dealers and, if so, at what level the requirements, particularly net capital requirements, should be established. It would appear that the impact of many of the recent government securities dealer failures would have been lessened considerably if there had been a functioning net capital rule in place and audits or inspections had detected the significant trading and other losses incurred by those firms and related firms. At the same time, the substantial leverage in the government securities industry, and the selective absence of significant capital reserves for many firms, suggests that caution would have to be exercised in applying any financial responsibility standards in this market. In this context, the Commission specifically requests commentators to discuss the FRBNY's proposed voluntary capital adequacy standards⁴¹ and whether any capital standards should be made mandatory.⁴²

The Commission also requests commentators to discuss whether there should be specific margin requirements imposed on transactions in government securities. The Commission requests commentators to consider direct Federal regulation of margin, such as that engaged in by the FRB under Section 7 of the Exchange Act with respect to transactions in corporate securities,⁴³ or, alternatively, margin regulations established by an SRO, subject to government oversight,⁴⁴ or SRO margin

³⁴ See section 17A(a)(2), (3)(A) of the Exchange Act. Under the clearing agency model, one agency would be the principal oversight agency, and would consult and cooperate with other interested agencies to insure that each fulfills its respective regulatory responsibilities, especially when proposed SRO rules are involved. In addition, interested agencies would make and enforce their own rules with respect to government securities dealers over whom they have jurisdiction.

³⁵ Securities Exchange Act Release No. 20578 [January 18, 1984], 49 FR 2884. Under the CTFC-SEC Accord model, one agency would be the principal oversight authority, and other agencies would be able to comment upon and in certain instances veto action taken by the principal authority.

³⁶ As discussed above with respect to the scope of SRO and federal oversight of government securities dealers, see *supra* text accompanying notes 28-33, the Commission recognizes that, even if additional regulation of the government securities market is deemed to be cost-effective, some of these types of requirements may not be found to be applicable to all government securities dealers. Accordingly, the Commission requests commentators to address each of the areas of possible regulation and to discuss the costs and benefits of imposing such regulations on various participants in the government securities markets. The Commission further requests commentators to describe any specific operational characteristics of the government securities markets that may be relevant to a discussion of whether a particular aspect of regulation is cost-effective.

³⁷ Rule 15c3-1 under the Exchange Act.

³⁸ Rule 15c3-3 under the Exchange Act.

³⁹ Rule 15c3-3(b) under the Exchange Act.

⁴⁰ Rule 15c3-3(e)(2) under the Exchange Act.

⁴¹ See *supra* note 8.

⁴² The Commission also requests comment on whether there should be periodic financial and operational reporting by government securities dealers in a manner similar to the FOCUS Reports filed by registered broker-dealers on Form X-17A-3 under the Exchange Act.

⁴³ See Regulations G (12 CFR Part 207); T (12 CFR Part 220); U (12 CFR Part 221); and X (12 CFR Part 224) promulgated by the FRB.

⁴⁴ Margin regulation established by an SRO, subject to government oversight, would be similar to

³³ See *infra* text accompanying notes 37-63.

regulation that is not subject to any formal government oversight.⁴⁵

Many of the recent problems in the government securities markets have involved repurchase transactions. Hence, the Commission requests comment on whether it is desirable to establish specific financial and operational regulations governing the repurchase agreement market. For example, should there be regulations concerning the collateralization of repurchase transactions?⁴⁶ In this regard, what regulations should be adopted, and what changes should be made to existing regulations governing either book-entry, physical delivery, or segregation of collateral for these transactions? Also, should the extent of regulation vary according to the duration of the transaction?⁴⁷ Finally, should there be specific regulations governing mark-to-market payments in these types of transactions?

With respect to regulation of the operational and processing aspects of the government securities market, the Commission first notes that evidence of ownership of Treasury bills is now solely in book-entry form and that settlement in these securities occurs by electronic communication systems. Beginning in 1986, all new issues of Treasury bonds and notes also will be issued and traded in this manner. In addition, the Commission notes that the MBS Clearing Corporation ("MBSCC"), a subsidiary of the Midwest Stock Exchange, was established in 1979 to offer settlement services to firms active in the GNMA market. In March 1985, MBSCC, in conjunction with Chemical Bank, also began offering depository services on certain GNMA's.⁴⁸ As a

general matter, however, most transactions in government-related securities are not processed in an automated environment.

On February 25 and 26 and March 8, 1985, the Commission hosted a series of workshops on increasing the immobilization, and ultimate elimination, of securities certificates. A primary focus of the workshops was to identify steps that could be pursued to immobilize or eliminate certificates in the government-related securities markets. Virtually unanimous support was expressed for developing book-entry or similar systems. The Commission currently lacks direct authority over clearing agencies or their participants engaged exclusively in processing of such securities. Accordingly, the Commission requests comment on what regulatory action, if any, is appropriate to facilitate more efficient processing of government securities. Commentators are requested to focus both on the long-term adequacy of current book-entry processing system, especially if trading volume greatly increases in these instruments, and on the need for automated clearing facilities in instruments not issued solely in book-entry form.⁴⁹

The Committee also requests comment on the need for specific record retention requirements to facilitate inspections programs. While inspection programs are an essential portion of any direct regulatory scheme, the question of who should conduct the inspection has been raised previously.

A final issue relating to financial and operational regulation relates to insurance or similar protection for customers of government securities dealers that enter liquidation. Specifically, the Commission requests comment on whether the Securities Investor Protection Act of 1970 ("SIPA") should be extended to provide protection to customers of government securities dealers not currently registered with the Commission.⁵⁰ If so,

commentators are requested to consider whether the current levels of coverage provided under SIPA would be cost-effective for government securities dealers, or for losses from government securities transactions by broker-dealers.⁵¹

2. Professional Qualifications.

Persons associated with registered broker-dealers must meet professional qualification standards. The Act specifically empowers SROs to ensure the qualifications of persons associated with member firms.⁵² One aspect of professional qualifications is the requirement to pass an examination testing knowledge relevant to particular functions in the industry.⁵³ In addition, SROs are empowered, subject to Commission review, to deny membership to a broker-dealer, and bar any person from becoming associated with broker-dealers, who is subject to a statutory disqualification.⁵⁴

The Commission requests comment on which, if any, of these professional qualifications requirements should be applicable to the government securities markets. In doing so, commentators are requested to address what particular supervisory requirements would be cost-effective in the government securities market and whether persons with particular statutory disqualifications should be restricted from participating in this market.

3. Business Practices. Pursuant to the statutory directive to adopt rules to prevent fraudulent and manipulative acts and practices, to promote just and

transactions, would SIPA have adequate funds to satisfy customer claims?

⁴⁵ If the property in possession of a failed broker-dealer that is distributed to customers is insufficient to satisfy customer claims, SIPA advances funds up to \$500,000 per customer, of which no more than \$100,000 can be to satisfy claims for cash.

⁴⁶ See Sections 6(c)(3)(B), 15A(g)(3)(B), and 15B(b)(2)(E) of the Exchange Act.

⁴⁷ See NASD By-Laws, Article 1, sections 1-2 and Schedule C thereunder ("Schedule C"); MSRB rules G-2 and G-3; NYSE Rule 345. For example, registered representatives must pass either: (i) The Series 7 General Securities Representative Examination, Schedule C at III(2)(a), to qualify to conduct a general securities business; or (ii) a more specialized examination or examinations to qualify to conduct specific limited types of business. Specialized examinations include the MSRB's Municipal Securities Representative Examination, MSRB rule G-3(e), and NASD Limited Representative examinations for direct participation programs, Schedule C at III(2)(c), investment company and variable contracts products, *Id.* at III(2)(b), and options products, *Id.* at III(2)(d). Similarly, supervisory personnel must pass the relevant principal examinations. These examinations generally parallel the categories of examinations applicable to registered representatives, with additional examination, such as one for financial and operational principals.

⁴⁸ See *supra* notes 26-27 and accompanying text.

the manner in which margin requirements currently are established for options on stock indices, debt securities, and foreign currency, and in which they have been proposed to be established for individual stock options. See FRB Docket No. R-0538. Various alternative approaches toward margin regulation are discussed in an extensive recent study by the FRB staff. See FRB, *A Review and Evaluation of Federal Margin Regulations* (December 1981).

⁴⁹ For example, margins for futures are established by the board of trade, and the CFTC is statutorily precluded from reviewing those margins. See section 5a(12) of the Commodity Exchange Act.

⁵⁰ See also *supra* text accompanying notes 24-25.

⁵¹ The Commission also requests comment on whether specific regulatory programs are necessary to address other particular types of transactions in government securities, such as GNMA forward and standby transactions.

⁵² The Commission understands that GNMA recently has indicated interest in the development of a book-entry system for GNMA securities and has stated to MBSCC that, should its depository prove viable, it was interested in holding discussions with MBSCC on further measures to streamline efficient operation of the GNMA market. *Cumie Mae Will Use MBS for Clearance of its Securities, Bond Buyer*, April 11, 1985.

⁵³ In considering this area, the Commission notes that the MSRB recently adopted rules requiring municipal securities brokers and dealers to use the facilities of a clearing agency for clearance of transactions in municipal securities if they are members of one or more clearing agencies that offer such services. MSRB rules G-12(f).

⁵⁴ The Commission notes that government securities positions held by customers of registered broker-dealers who also conduct a government securities business currently are protected by SIPA in the event of the default of the broker-dealer. Nevertheless, the Securities Investor Protection Corporation ("SIPC") takes the position that persons engaged in repurchase transactions with SIPC member firms are not customers under SIPA and therefore are not protected by SIPA. In the event that SIPA did apply to the repurchase

equitable principles of trades, to protect investors and to further the public interest,⁵⁵ SROs have adopted a number of rules regulating various business practices of their members. In addition, the Commission, pursuant to the anti-fraud sections of the securities acts,⁵⁶ has adopted various rules and adopted enforcement programs that address the business conduct of broker-dealers.

While some of the business practice rules adopted by the Commission and the SROs had, as their original basis, the objective of assuring that broker-dealers protected themselves against unsound practices, for the most part they have evolved into rules designed to protect investors dealing with those broker-dealers. In considering the appropriateness of applying business practice rules to government securities dealers, it is necessary to understand the nature of the customers with whom they typically do business.

A significant presumption behind a number of provisions of the federal securities laws and Commission rules is that, as the financial resources of an investor increases, his need for protection under the federal securities laws decreases, primarily because the sophistication of the investor, or his ability to obtain professional advice or counsel, commensurately increases.⁵⁷ Transactions in the market for government securities generally are substantial in size. Nevertheless, abuses that have come to light in the past in the government securities markets generally have involved entities regarded as "institutional investors," often financial institutions.⁵⁸ Accordingly, a significant question raised by problems encountered in the government securities industry is whether the presumption of sophistication usually attached to investors with significant assets is applicable to investors in the government securities markets, or whether the complexity of transactions or other factors related to this market necessitate additional protection for otherwise sophisticated investors. As a related matter, if it is felt that these customer losses stem from sophisticated investors that have received inadequate management or advice, commentators are asked to consider whether

additional regulation of these investors by their regulators, or other approaches such as the FRBNY's educational initiative, would be more cost-effective than, or preferable to, regulation of government securities dealers.

The Commission requests commentators to focus on a number of specific areas where business practice rules have been adopted in the past. First, those SROs that regulate registered broker-dealers have rules to ensure that members recommend to a customer only securities that are suitable for that customer.⁵⁹ Similarly, these rules also address "churning," or engaging in excessive trading solely to generate commissions.⁶⁰ In the past, the most rigorous suitability rules have been intended to address potential problems involving speculative low-priced securities, securities where market information is unavailable, or potentially risky trading strategies involving options.

Government securities in and of themselves pose virtually no credit risk to investors. Nevertheless, trading vehicles such as repurchase agreements, reverse repurchase agreements, GNMA forwards and standbys, and when-issued trading may pose suitability issues. Hence, the Commission requests comment on whether suitability concerns are raised in the more complex trading strategies involving government securities.

Second, the Commission and the SROs have rules governing disclosure that must be made in confirming trades with customers.⁶¹ The Commission requests comment on whether there should be specific confirmation requirements applicable to the government securities markets, for example, as regards to the general provisions of repurchase agreements.

Third, pursuant to its general investigative and antifraud authority, the Commission investigates, and can take enforcement action, if it believes that customers are being charged excessive mark-ups or commissions,⁶²

including transactions in government securities.⁶³ The Commission requests comment on whether reliance on the Commission's general antifraud authority is sufficient in this area or whether there should be more specific regulation of commissions and mark-ups of government securities.

Finally, the Commission requests comment on any other business practice regulations that commentators may believe are appropriate. Areas of possible comment include, but are not limited to, disclosure of possible conflicts of interests, regulations concerning quotation and last sale reporting, and rules regarding employee trading.

III. Conclusion

In preparation of its response to Congress on the need for additional regulation of the government securities markets, the Commission is seeking comment on a wide variety of issues. The Commission requests commentators to address both the specific issues raised in this release and any other issues believed to be relevant to the government securities markets.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Dated: April 19, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-9797 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 240 and 249b

[Release No. 34-21950; File No. S7-15-85]

Revised Transfer Agent Forms and Related Rules

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is publishing for comment amendments to the forms and rules for the registration and monitoring of

with surveillance and enforcement authority also inspect for violations of the rules, and can take action in appropriate circumstances.

⁵⁵ The Commission has used this authority on several occasions to bring enforcement actions with respect to government securities. See, e.g., *SEC v. Winters Government Securities Corporation* (S.D. Fla., No. 77 Civ. 6345), *Litigation Rel. No. 8067* (August 15, 1977), 12 SEC Doc. 1500; *Sec. v. MV Securities, Inc.* (S.D.N.Y., No. 84 Civ. 1164), *Litigation Rel. Nos. 10289* (February 21, 1984) and 10303 (March 5, 1984), 29 SEC Doc. 1454 and 1591.

⁵⁵ See sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(c) of the Exchange Act.

⁵⁶ See sections 10(b), 15(c)(1), and 15(c)(2) of the Exchange Act and 17(a) of the Securities Act.

⁵⁷ See, e.g., Rule 215 under the Securities Act, defining the term "accredited investor" as used in section 2(13) of the Securities Act and Rule 215 thereunder; and Section 205 of the Investment Advisers Act of 1940.

⁵⁸ See, e.g., *Government-Related Securities Report*, supra note 4, at 106-117.

⁵⁹ See NASD Rules of Fair Practice Article III section 2; MSRB rule G-19.

⁶⁰ See NASD Policy of the Board of Governors: Fair Dealing With Customers, under Article III section 2 of the NASD's Rules of Fair Practice.

⁶¹ The confirmation rules generally require certain information to be disclosed to customers, including, with respect to debt securities, dollar value and yield information and, where applicable, information concerning possible redemption before maturity. Commission Rule 10b-10; NASD Rules of Fair Practice Article III Section 12; MSRB rule G-15.

⁶² In addition, SROs have more specific rules intended to ensure that their members are not charging excessive mark-ups and commissions in non-exempt securities. NASD Rules of Fair Practice Article III section 4; MSRB rule G-30. Those SROs

transfer agents. Revised Form TA-1 is proposed to remain essentially the same as the present Form TA-1, except several questions that are viewed as no longer necessary have been deleted, and others have been shifted to proposed Form TA-2. The proposed supplement to Form TA-1 would be completed only by independent, non-issuer transfer agents who register with the Commission and would provide information about persons associated with transfer agents. Proposed Rule 17Ac2-2 would require all transfer agents to file an annual report of their business activities on proposed Form TA-2. Exempt transfer agents would only be required to provide identifying information and provide responses to two basic questions. Finally, the proposed amendment to Rule 17Ac2-1(c) would extend the time period for a registrant to file corrections to Form TA-1.

The proposed filing requirements have been carefully drafted to elicit only necessary information and to apply only to transfer agents from whom the information is necessary. Adoption should significantly enhance the Commission's regulatory programs regarding transfer agents by providing data to permit the Division of Market Regulation ("Division") to monitor industry changes.

DATE: Comments must be received on or before June 17, 1985.

ADDRESS: Persons wishing to submit written views, data and comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comments should refer to File No. S7-15-85 and will be available for public inspection and copying at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Randy G. Goldberg, Esq. at (202) 272-2365, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In 1975, Congress enacted legislation for the regulation of the securities processing industry.¹ A registration requirement was imposed on transfer agents, and the appropriate regulatory agencies ("ARAs"), which are the federal bank regulatory agencies and the Commission, were given broad authority to develop an appropriate registration application.² While the bank regulatory

agencies were given the primary responsibility for the oversight of bank transfer agents,³ the Commission was given broad regulatory authority to make rules and to enforce compliance for all entities involved in the securities processing area.⁴

In the spirit of cooperation envisioned by the Securities Exchange Act of 1934, the Commission and the bank regulators jointly develop Form TA-1 to accomplish the registration requirement.⁵ In 1980 and 1981 the ARAs eliminated the annual amendment requirement to Schedule B of Form TA-1 while simultaneously anticipating a comprehensive revision of the Form.⁶ The proposed Forms TA-1 and TA-2 represent the culmination of those efforts.

Proposed Amendments to Form TA-1

Form TA-1 is currently used by transfer agents required to register with their ARA, which would be the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation.⁷

The revised Form TA-1 requires transfer agents to provide only basic information, including the name and address of the proposed entity and where the transfer agent functions will be performed. The difference between the proposed form and the form presently utilized is that existing questions which have been determined to be unnecessary have been eliminated, and other questions contained in Form TA-1 have been shifted to proposed Form TA-2. The proposed Form TA-1 has been adopted by the bank regulatory agencies and is currently used by bank transfer agents.

The proposed SEC Supplement to Form TA-1 solicits background information for the owners and other persons in control positions at independent, non-issuer transfer agencies, with particular emphasis on whether offenses have been committed by these persons, and therefore, whether the transfer agent's association with a

particular individual would have an impact on the transfer agent's ability to perform its functions properly.⁸ Presently, there are fewer than one hundred registered independent non-issuer transfer agents regulated by the Commission. The questions included in the SEC Supplement to Form TA-1 parallel several questions to be included in the revised versions of both Form BD, the Uniform Application for Broker-Dealer Registration and Form U-4, utilized by the National Association of Securities Dealers for registration of registered representatives. The Proposed SEC Supplement to Form TA-1 would enable a more thorough review of independent, non-issuer transfer agents registering with the Commission.

The Commission's regional offices have noted instances where receptionists or other clerical employees have executed the existing Form TA-1 as a "duly authorized principal," thus concealing the identity of the persons responsible for the conduct of the transfer agent. The proposed SEC Supplement to Form TA-1 would eliminate this problem by requiring that names of all owners and other persons in control positions at the transfer agent must be disclosed and the existence of prior violations of securities-related laws and rules must be reported. Further, the SEC Supplement requires control persons at a transfer agent to disclose whether they had ever been found to have been a cause of a firm having its authority to do business denied, restricted, suspended or revoked.⁹ Thus, the Commission would be aware of a control person's prior association with a transfer agent.

Pursuant to Rule 17Ac2-1(c), a transfer agent is required to amend its registration application once information reported therein becomes false, misleading, or inaccurate. Therefore transfer agents who register with the Commission would have an ongoing obligation to amend the SEC Supplement to report other relevant violations committed by control persons or proceedings instituted against these persons subsequent to the transfer agent's registration having been approved.

Proposed Amendment to Rule 17Ac2-1(c)

The proposed amendment to Rule 17Ac2-1(c) would extend the time

¹ See section 17A(d)(3)(A)(ii) of the Act.

² See section 17A(d)(3)(B) of the Act.

³ The Commission also adopted rule 17Ac2-1(a) which requires transfer agents to complete Form TA-1 prior to commencing transfer agent activities. See Securities Exchange Act Release No. 34-11759 (October 22, 1975), 40 FR 51181 (November 4, 1975).

⁴ See Securities Exchange Act Release No. 34-17410 (December 30, 1980), 46 FR 1665 (January 7, 1981). The bank regulators eliminated this requirement in January 1981. Schedule B required registrants to inform their ARA of changes both in issuers for which they perform transfer agent services and the capacity in which the transfer agent acted with respect to those issuers.

⁵ See Section 3(a)(34)(B) of the Act.

⁶ Completion of the SEC Supplement to Form TA-1 would not be required by issuers that act as transfer agents solely for their own securities or securities of an affiliate, or by bank transfer agents.

⁷ See proposed SEC Supplement to Form TA-1, questions 3(C)(3), 3(D)(3), 3(E)(3).

¹ See Pub. L. 94-29 (June 4, 1975) the securities processing industry refers to both transfer agents and clearing agencies.

² See sections 17A(c)(1) and (2) of the Securities Exchange Act of 1934 ("the Act").

period from twenty-one to sixty days for a registrant to file an amendment to Form TA-1 correcting information which had been previously reported and which thereafter becomes inaccurate, misleading or incomplete.

Proposed Rule 17Ac2-2 and Form TA-2

Proposed Rule 17Ac2-2 would require registered transfer agents to file a report of their business activities annually on proposed Form TA-2. Proposed Form TA-2 elaborates on several questions which are presently included in Form TA-1 relating to the nature of the transfer agent's business activities, and contains other basic questions regarding the volume and nature of the transfer agent's activities. Essentially, the transfer agent will be required to state the volume of certain activities it performs, the number of securities issues it services and the capacity in which the transfer agent acts. The Commission expects that these compilations can be easily produced, and indeed in certain cases transfer agents are already required to calculate this information. For example, question 3 requires information about the number of items received for transfer during the last six months. Transfer agents are required to compile this routinely pursuant to Rule 17Ad-6.

All registered transfer agents, regardless of their ARA, will be required to submit this annual report to the Commission. However, small transfer agents will be exempt from responding to all but two basic questions. The staff estimates that approximately one-half of the transfer agents whose ARA is the Commission will satisfy the exemption criteria.¹⁰

The information provided should assist the Commission in its examination and oversight program. In addition, the form will assist the Commission in keeping abreast of developments in the transfer agent industry, which during the past decade has undergone significant change. The annual reports would enable the staff to develop and maintain a current composite profile of the transfer agent community. This profile would assist in the identification of industry trends, and would enable the Commission both to review on an ongoing basis the adequacy of existing rules relating to

transfer agent performance and to assure that any additional regulations prepared for future adoption are based on current information. To the extent that the success of the Commission's oversight program is dependent on the availability of current and complete information regarding the transfer agent industry, proposed Form TA-2 would be an important resource.

List of Subjects in 17 CFR Parts 240 and 249b

Reporting and recordkeeping requirements, Securities.

Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17, 17A and 23(a) thereof, 15 U.S.C. 78q, 78q-1 and 78w(a), the Commission proposes to amend § 240.17Ac2-1(c) and Form TA-1 (17 CFR § 249b.100) and proposes § 240.17Ac2-2 and Form TA-2 for inclusion in Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

Text of Proposed Amendments and Forms

17 CFR Parts 240 and 249b are proposed to be amended as follows:

PART 240—[AMENDED]

1. By revising paragraph (c) to § 240.17Ac2-1 as follows:

§ 240.17Ac2-1 Application for registration of transfer agents.

(c) If any of the information reported on Form TA-1 becomes inaccurate, misleading, or incomplete, the registrant shall correct the information by filing an amendment on Form TA-1 within sixty days following the date on which the information became inaccurate, misleading, or incomplete.

2. By adding § 240.17Ac2-2 as follows:

§ 240.17Ac2-2 Annual reporting requirement for registered transfer agents.

Every registered transfer agent shall file an annual report on Form TA-2 in accordance with the instructions contained therein by July 31 of each year, except that a registered transfer agent is not required to file Form TA-2 if it received fewer than 500 items for transfer and fewer than 500 items for processing in the six months ending June 30 of the year for which the form is being filed, does not maintain master securityholder files for more than 1000 individual securityholder accounts as of June 30 of the year for which the form is being filed is only required to complete

Page One and the execution section of Page Two of Form TA-2.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

3. By amending § 249b.100 by updating the address in footnote 1 to read: Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and by revising Form TA-1.

§ 249b.100 Form TA-1, uniform form for registration as a transfer agency pursuant to Section 17A of the Securities Exchange Act of 1934.

Securities and Exchange Commission, Washington, D.C. 20549

Instructions for Use of Form TA-1

Uniform form for registration and amendment to registration as a transfer agent pursuant to section 17A of the Securities Exchange Act of 1934.

Attention: Certain Sections of the Securities Exchange Act of 1934 applicable to transfer agents are referenced or summarized below. Transfer agents are urged to review all applicable provisions of the Securities Exchange Act of 1934, the Securities Act of 1933 and the Investment Company Act of 1940, as well as the applicable rules promulgated by the SEC under those Acts.

I. General Instructions for Filing and Amending Form TA-1

A. *Terms and Abbreviations.* The following terms and abbreviations are used throughout these instructions:

1. "Act" refers to the Securities Exchange Act of 1934.
2. "ARA" refers to the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act. See General Instruction D. below.
3. "Federal Bank Regulators" or "FBRs" refers to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.
4. "Form TA-1" includes the Form and any attachments to that Form, whether filed as a registration or an amendment to registration.
5. "Registrant" refers to the entity on whose behalf Form TA-1 is filed.
6. "SEC" refers to the Securities and Exchange Commission.
7. "Transfer agent" is defined in Section 3(a)(25) of the Act as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer in at least one of the functions enumerated therein.

B. *Who Must File.* Pursuant to Section 17A(c)(1) of the Act, it is unlawful for a transfer agent to perform any transfer agent function with respect to any qualifying security unless that transfer agent is registered with its ARA.

A "qualifying security" is any security registered under Section 12 of the Act. Thus, qualifying securities include securities registered on a national securities exchange pursuant to Section 12(b) of the Act as well as equity securities registered pursuant to

¹⁰ Exempted from this requirement are those transfer agents who are both "exempt" as defined in Rule 17Ad-4(b)(1) and who do not maintain securityholder files containing more than one thousand securityholder accounts. In addition, the relatively few transfer agents that do not qualify as small under Rule 0-10(h), by virtue of their affiliation with a large entity, have been exempted by Rule 17Ac2-2 from completing Form TA-2.

Section 12(g)(1) of the Act for issuers that have total assets exceeding \$3,000,000 and a class of equity securities (other than exempted securities) held of record by 500 or more persons.

In addition, qualifying securities include equity securities of registered investment companies and certain insurance companies that would be required to be registered under Section 12(g) except for the exemptions provided by subsections (g)(2)(B) and (g)(2)(G), respectively, of Section 12, *i.e.*, when the asset and shareholder criteria of Section 12(g)(1)(B) are met.

C. When to File. Before a transfer agent may perform any transfer agent function for a qualifying security, it must apply for registration on Form TA-1 with its ARA and its registration must become effective. Instructions for amending Form TA-1 appear at General Instruction F.

D. How and Where to File; Number of Copies. Each registrant must file Form TA-1 with its ARA. SEC registrants must also file the SEC Supplement. If a registrant's ARA is a FBR, a copy of the registration or any amendment also must be filed with the SEC. However, the FBRs will send the submitted filings to the SEC on behalf of their registrants to satisfy that requirement. A registrant may determine the name and address of its ARA from the following:

1. A national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank registers with the *Comptroller of the Currency*, at: Office of the Comptroller of the Currency, Administrator of National Banks, Trust Examinations Division, Washington, D.C. 20219.

2. A state member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (1) or (3) of this section registers with the *Board of Governors of the Federal Reserve System*, at: Board of Governors of the Federal Reserve System, Trust Activities Program, Washington, D.C. 20551.

3. A bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member of the Federal Reserve System) or a subsidiary thereof registers with the *Federal Deposit Insurance Corporation*, at: Federal Deposit Insurance Corporation, Trust Section, Washington, D.C. 20429.

4. All other transfer agents register with *Securities and Exchange Commission*, at: Securities and Exchange Commission, Division of Market Regulation, Washington, D.C. 20549.

If the registrant's ARA is a FBR, the registrant must file the original and four copies of any registration or amendment with the appropriate FBR and need not file directly with the SEC. If the registrant's ARA is the SEC, the registrant must file with the SEC the original and three copies of any registration

or amendment. The original copy of Form TA-1 must be manually signed and any additional copies may be photocopies of the signed original copy. All copies must be legible, on good quality 8 1/2 x 11 inch white paper. The registrant must keep an exact copy of any filing for its records.

E. Effective Dates. Registration of a transfer agent becomes effective thirty days after receipt by the ARA of the application for registration, unless the filing does not comply with applicable requirements or the ARA takes affirmative action to accelerate, deny or postpone registration in accordance with the provisions of Section 17A(c) of the Act.

F. Amending Registration. Each registrant must amend Form TA-1 within sixty calendar days following the date on which information reported therein becomes inaccurate, incomplete or misleading.

II. Special Instructions for Filing and Amending Form TA-1

A. Registration. Respond in full to all Questions. If the appropriate response to a Question is "none," or if any Question is "not applicable," respond with "none" or "N/A" respectively.

1. In answering Question 3.c and 7 of Part I, the term "Financial Industry Number Standard" ("FINS" number) means a six digit number assigned by The Depository Trust Company ("DTC") to financial institutions engaged in activities involving securities. Registrants that do not have a FINS number may obtain one free of charge by writing to the DTC ID Task Force at 11 Broadway, 13th Floor, New York, N.Y., 10004, stating its name, address, and type of business (such as "bank" or "non-bank transfer agent").

2. State in Question 3.d. the full address of the registrant's principal office where transfer agent activities are, or will be, performed; a post office box number is not acceptable. State in response to Question 3.f. the registrant's mailing address if different from the response to Question 3.d. You may provide a post office box number in response to Question 3.f.

3. If additional space is needed to answer Questions 4, 5, and 7, photocopy the appropriate page(s) of a blank Form TA-1, and continue such answers thereon.

4. In answering Questions 4 and 7 do not check any of the boxes marked "Delete." These boxes are to be used only when amending Form TA-1.

5. For the purpose of answering Question 5, a transfer agent is an "affiliate" of, or "affiliated" with, a person, if the transfer agent directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, that person.

6. In answering Questions 5 and 7, a "named transfer agent" is a transfer agent engaged by the issuer to perform transfer agent functions for an issue of securities. There may be more than one named transfer agent for a given security issue (e.g., principal

transfer agent, co-transfer agent or outside registrar).

B. Amending Registration. When amending Form TA-1, the registrant must identify itself and the filing by answering Questions 1 through 3.c. Thereafter, only answer Questions that require amendment. When adding new information, enter that information into the appropriate spaces. When deleting information from a prior filing, repeat the information exactly as it appeared in the prior filing and check the corresponding box marked "Delete."

C. Execution of Form TA-1 and Amendments Thereto. A duly authorized official or a principal of the registrant must execute Form TA-1 and any amendments thereto on behalf of that registrant. For a corporate registrant, the term "official" includes chairman or vice-chairman of the board of directors, chairman of the executive committee, or any officer of the corporation who is authorized by the corporation to sign Form TA-1 on its behalf. For a non-corporate registrant, duly authorized principal means a principal of the registrant who is authorized to sign Form TA-1 on its behalf.

The name of the individual signing Form TA-1 shall be stated in full (*i.e.*, first name, middle name and last name). Initials are not acceptable, unless they are part of the individual's legal name.

By executing Form TA-1, the registrant agrees and consents that notice of any proceeding under the Act by the FBRs or the SEC involving the registrant may be given by sending such notice by registered or certified mail or confirmed telegram to the registrant, "Attention Officer in Charge of Transfer Agent Activities," at its principal Office for transfer agent activities as given in response to Question 3.d. of Form TA-1.

III. Special Instructions for Filing and Amending the SEC Supplement to Form TA-1

A. Who must file. Only non-issuer registrants whose appropriate regulatory agency is the Securities and Exchange Commission (See General Instruction D) are required to complete the SEC Supplement to Form TA-1.

B. Amendments to the SEC Supplement to Form TA-1. Transfer agents required to complete the SEC Supplement to Form TA-1 are also required to amend the Form TA-1 Supplement, within the time period provided by Rule 17Ac2-1(c) (17 CFR 240.17Ac2-1(c)), when information which the transfer agent knows or reasonably should know comes to the attention of such transfer agent. When amending the Supplement to Form TA-1, the transfer agent must identify itself and the filing by answering Questions 1 through 3.c. of Form TA-1. Thereafter, transfer agents need only answer Questions contained in the Supplement of Form TA-1 that require amendments (including any explanation that may be appropriate pursuant to Question 4 of Part Two of Form TA-1).

IV. Notice

Under Sections 17, 17A(c) and 23(a) of the Act and the rules and regulations thereunder, the ARAs are authorized to solicit from applicants for registration as a transfer agent and from registered transfer agents the information required to be supplied by Form TA-1. Disclosure to the ARA of the information requested in Form TA-1 is a prerequisite to the processing of Form TA-1. The information will be used by the principal purpose of determining whether the ARA should permit an application for registration to become effective or should deny, accelerate or postpone registration of an applicant. The information supplied herein may also be used for all routine uses of the Commission or the ARAs. Information supplied on this Form will be included routinely in the public files of the ARAs and will be available for inspection by any interested person.

BILLING CODE 8010-01-M

Regulator/
File Number
08 -

FORM TA-1

Uniform Form For Registration as a Transfer Agent
and for amendment to registration pursuant to
Section 17A of the Securities Exchange Act of 1934

OMB APPROVAL
OMB #: 3235-0084
Exp. Jan.31,1987

GENERAL: Form TA-1 is to be used to register or amend registration as a transfer agent with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934. Read all instructions before completing the Form. Please print or type all responses.

1. Appropriate regulatory agency (check one)
(See General Instruction D):

Comptroller of the Currency ☐
Board of Governors of the Federal Reserve System ☐
Federal Deposit Insurance Corporation ☐
Securities and Exchange Commission ☐

2. Filing status of this Form (check one):

Registration ☐ Amendment to Registration ☐

3. a. Full name of registrant: b. If registrant is a successor to a registered transfer agent, state:

(Name)

(Name of Predecessor)

(Name, continued)

(Name, continued)

(Previous name, if being amended)

File Number 08::/:::

(Previous name, continued)

Date of Succession :::/:::/:::
(MO/DAY/YR)

- c. Financial Industry Number Standard (FINS) number
(See Special Instruction A1):

- d. Address of principal office where transfer agent activities are, or will be, performed (See Special Instruction A2):

(Number and Street)

(City) (State) (Zip Code)

- e. Telephone Number: _____
(Area Code) (Number)

f. Mailing address, if different from response to Question 3d:

.....
(Number and Street)

..... (City) (State) (Zip Code)

4. Does registrant conduct, or will it conduct, transfer agent activities at any location other than that given in question 3d above? yes no
☐ ☐

If "yes," provide address(es):

(Number and Street)

Delete address
[]

.....
(City) (State) (Zip Code)

Delete address
[]

(Number and Street)

..... : : :-.....
(City) (State) (Zip Code)

5. Does registrant act, or will it act, as a transfer agent solely for its own securities and/or securities of an affiliate(s) (See Special Instruction A5)?
- | | |
|--------------------------|--------------------------|
| yes | no |
| <input type="checkbox"/> | <input type="checkbox"/> |

6. Has registrant, as a named transfer agent, engaged, or will it engage, a service company to perform any transfer agent functions? yes ☐ no ☐

If "yes," provide the name(s) and address(es) of all service companies engaged, or that will be engaged, by the registrant to perform its transfer agent functions:

.....
(Name)

(Number and Street)

.....
(City) (State) (Zip Code)

(Name) _____

(Number and Street)

::::::::::::::

(City) :::: (State) :::-:::::

(Zip Code)

7. Has registrant been engaged, or will it be engaged, as a service company by a named transfer agent to perform transfer agent functions?

yes
☐no
☐

If "yes," provide the name(s) and the FINS number(s) of the named transfer agent(s) for which the registrant has been engaged, or will be engaged, as a service company to perform transfer agent functions:

		Delete
..... (Name) (FINS no.)	<input type="checkbox"/>
..... (Name) (FINS no.)	<input type="checkbox"/>
..... (Name) (FINS no.)	<input type="checkbox"/>
..... (Name) (FINS no.)	<input type="checkbox"/>
..... (Name) (FINS no.)	<input type="checkbox"/>

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. SEE 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

EXECUTION: The registrant submitting this Form, and the person executing it hereby represent that all the information contained herein is true, correct and complete.

Official responsible for Form:

(Manual signature)

(Title)

.....
(First name, Middle name, Last name)

.../.../...
(MO DAY YR)

Regulator/	:	:
File Number	:	:
084/ :::::	:	:
	:	:

SEC SUPPLEMENT

TO FORM TA-1

:::/:::/:::
(MO/DAY/YR)

COMPLETION OF THE SEC SUPPLEMENT IS ONLY REQUIRED BY NON-ISSUER REGISTRANTS
WHOSE APPROPRIATE REGULATORY AGENCY IS THE SECURITIES AND EXCHANGE COMMISSION

Full name of registrant: ::

1. If registrant is a:

- (1) Corporation - Complete Schedule A
 (2) Partnership - Complete Schedule B
 (3) Sole Proprietorship or other (specify) _____ - Complete Schedule C

2. Does any person or entity not named in Schedules A, B or C:

- (1) directly or indirectly, through agreement or otherwise, exercise
or have the power to exercise control over the management or
policies of applicant; or ☐ yes ☐ no

(If "yes," state on Schedule D the exact name [last, first, and middle]
of each person or entity and describe the agreement or other basis
through which such person or entity exercises or has the power to
exercise control.)

- (2) wholly or partially finance the business of applicant, directly
or indirectly, in any manner other than by a public offering of
securities made pursuant to the Securities Act of 1933 or by
credit extended in the ordinary course of business by suppliers, ☐ yes ☐ no
banks and others? ☐ ☐

(If "yes," state on Schedule D the exact name [last, first, and middle]
of each person or entity and describe the agreement or arrangement
through which such financing is made available, including the amount
thereof.)

DEFINITIONS

Control affiliate - An individual or firm that directly or indirectly controls,
is under common control with, is controlled by or has the power to exercise
control over the management or policies of applicant. Included are any employees
identified in Schedules A, B, C or D of this form. Excluded are any employees
who perform solely clerical, administrative support or similar functions.

Investment or investment-related - Pertaining to securities, commodities, banking,
insurance, or real estate (including, but not limited to, acting as or being
associated with a broker-dealer, investment company, investment advisor, futures
sponsor, bank, or savings and loan association).

Involved - Doing an act of aiding, abetting, counseling, commanding, inducing,
conspiring with or failing reasonably to supervise another in doing an act.

3A. In the past ten years has any control affiliate been convicted of or plead
guilty or nolo contendere ("no contest") to:

- (1) a felony or misdemeanor involving: investments or an
investment-related business, fraud, false statements
or omissions, wrongful taking of property, or bribery,
forgery, counterfeiting or extortion? ☐ yes ☐ no
yes ☐ no
- (2) any other felony? ☐ ☐

B. Has any court:

- | | | |
|--|---------------------------------|--------------------------------|
| (1) In the past ten years enjoined any control affiliate in connection with any investment-related activity? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (2) ever found that any control affiliate was involved in a violation of investment-related statutes or regulations? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

- | | | |
|--|---------------------------------|--------------------------------|
| (1) found any control affiliate to have made a false statement or omission? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (2) found any control affiliate to have been involved in a violation of its regulations or statutes? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (3) found any control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (4) entered an order denying, suspending or revoking the registration of any control affiliate or otherwise disciplined it by restricting its activities? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |

D. Has any other Federal regulatory agency or any state regulatory agency:

- | | | |
|---|---------------------------------|--------------------------------|
| (1) ever found any control affiliate to have made a false statement or omission or to have been dishonest, unfair, or unethical? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (2) ever found any control affiliate to have been involved in a violation of investment-related regulations or statutes? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (3) ever found any control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (4) in the past ten years entered an order against any control affiliate in connection with any investment-related activity? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |
| (5) ever denied, suspended, or revoked the registration or license of a control affiliate or prevented any control affiliate from associating with an investment-related business, or otherwise disciplined such control affiliate by restricting its activities? | yes
<input type="checkbox"/> | no
<input type="checkbox"/> |

- (6) ever revoked or suspended the license of any control affiliate as an attorney or accountant? ☐ yes ☐ no

E. Has any self-regulatory organization or commodities exchange:

- (1) found any control affiliate to have made a false statement or omission? ☐ yes ☐ no
- (2) found any control affiliate to have been involved in a violation of its rules? ☐ yes ☐ no
- (3) found any control affiliate to have been the cause of an investment-related business losing its authorization to do business? ☐ yes ☐ no
- (4) disciplined any control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? ☐ yes ☐ no

- F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against any control affiliate related to investments or fraud? ☐ yes ☐ no

- G. Is any control affiliate now the subject of any complaint, investigation, or proceeding that could result in a "yes" answer to parts A-F of this item? ☐ yes ☐ no

- H. Has a bonding company denied, paid out on, or revoked a bond for any control affiliate? ☐ yes ☐ no

- I. Does any control affiliate have any unsatisfied judgments or liens against it? ☐ yes ☐ no

4. For each "yes" to Item 3, provide on Schedule D the following details of any court or regulatory action:

- * the individuals named in the action
- * the title and date of the action
- * the court or body taking the action and its location
- * a description of the action
- * the disposition of the proceeding

FORM TA-1 SEC Supplement (SCHEDULE B)				FOR PARTNERSHIP REGISTRANTS		File Number 084/*****
REGISTRANT NAME *****				*****		Date: ***/***/** (MO/DAY/YR)
List all general partners and list all limited and special partners who have contributed 5% or more of the partnership's capital. For each partner, complete appropriate columns below.						
ADD	Section for initial registration and for amendments reporting additional persons.					
FULL NAME		Social Security Number	Date of Relationship (Beginning)	Type of Partner	Percent of Partnership	
Last	First Middle	*****	Month Year			
AMEND	Section for amendments reporting changes in type or percentage of partnership owned by previously reported persons.					
DELETE	Section for amendments to amendments to report deletion of previously reported persons.					
			(Ending)			
SEC Form TA-1 SEC Supplement (X/85) (Schedule B)						

FORM TA-1 SEC Supplement (SCHEDULE D)		File Number 084/:::::
REGISTRANT NAME :::::::::::::::::::::::::::::::::::::::		Date: :::/:::/::: (MO/DAY/YR)
Use this Schedule to report details of affirmative responses to questions on Part II of Form TA-1.		
Item on Form (Identify)	Answer	

SEC Form TA-1 SEC Supplement (X/85) (Schedule D)

4. By adding § 249b.102 as follows:

§ 249b.102. Form TA-2, form to be used by transfer agents registered pursuant to Section 17A of the Securities and Exchange Act of 1934 for the annual report of transfer agent activities.

This form shall be used by transfer agents registered pursuant to Section 17A of the Securities Exchange Act of 1934 for filing an annual report of their business activities.

Securities and Exchange Commission,
Washington, D.C. 20549

Instructions for Use of Form TA-2

Form TA-2 is to be used by transfer agents registered pursuant to section 17A of the Securities Exchange Act of 1934 for filing the annual report of transfer agent activities.

ATTENTION: Certain Sections of the Securities Exchange Act of 1934 applicable to transfer agents are referenced below. Transfer agents are urged to review all applicable provisions of the Securities Exchange Act of 1934, the Securities Act of 1933 and the Investment Company Act of 1940, as well as the applicable rules promulgated by the SEC under those Acts.

I. General Instructions for Filing and Amending Form TA-2.

A. Terms and Abbreviations. The following terms and abbreviations are used throughout these instructions:

1. "Act" refers to the Securities Exchange Act of 1934.
2. "ARA" refers to the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act. See General Instruction C.
3. "Form TA-2" includes the Form and any attachments thereto.
4. "Registrant" refers to the entity on whose behalf Form TA-2 is filed.

5. "Rule" or "Rules" are found in Volume 17, Section 240 of the Code of Federal Regulations ("C.F.R.") e.g., Rule 17Ad-1(a) may be found in 17 CFR 240.17Ad-1(a).

6. "SEC" refers to the Securities and Exchange Commission.

7. "Transfer agent" is defined in Section 3(a)(25) of the Act as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer in at least one of the functions enumerated therein.

B. Who Must file; When to File. See Special Instruction C. Rule 17c2-2 requires that every registered transfer agent file Form TA-2 by July 31 of each year, except that a registered transfer agent is only required to complete Page One and the execution section on Page Two if it received fewer than 500 items for transfer and fewer than 500 items for processing in the six months ending June 30 of the year for which the form is being filed and does not maintain master securityholder files for more than 1,000 individual security holder accounts as of June 30 of the year for which the form is being filed.

The date on which any filing is actually received by the SEC is its filing date, provided that the filing complies with all applicable requirements. A filing that does not comply with applicable requirements may be rejected by the SEC. Acceptance of a filing, however, shall not constitute a finding that it has been filed as required or that the information therein is true, current or complete.

C. Number of Copies; How and Where to File. The registrant must file the original and two copies of Form TA-2 with the SEC. The original copy of Form TA-2 must be manually signed and any additional copies may be photocopies of the signed original copy. All copies must be legible, on good quality 8½ x 11 inch white paper. The registrant must keep an exact copy of any filing for its records.

Each registrant may file Form TA-2 directly with the Securities and Exchange

Commission at: Securities and Exchange Commission, Division of Market Regulation, Washington, DC 20549.

II. Special Instructions for Filing Form TA-2

A. Indicate at the top of the page the year for which Form TA-2 is filed.

B. For Question 3, indicate the number of items received for transfer and the number of items received for processing for the period January 1 to June 30 of the year for which Form TA-2 is being filed. (The underlined terms are defined in Rule 17Ad-1.) Omit transactions involving the purchase, sale and redemption of investment company shares. Report those items in response to Question 6.

C. In answering Question 7, a "Transfer Agent Custodian Arrangement" ("TAC") exists when certain institutional securityholders of record, such as broker-dealers, banks, and securities depositories, leave securities with a transfer agent. These securities are registered in the name of the institution or its nominee and are evidenced by a balance certificate. That balance certificate is retained by the transfer agent and is adjusted daily for the institution's deposit and withdrawal activity.

III. Notice

Under Sections 17, 17A(c) and 23(a) of the Act and the rules and regulations thereunder, the SEC is authorized to solicit from registered transfer agents the information required to be supplied on Form TA-2. Disclosure to the SEC of the information requested in Form TA-2 is required of all registered transfer agents. The information will be used for the principal purpose of regulating registered transfer agents but may be used for all routine uses of the Commission or of the ARAs. Information supplied on this Form will be included routinely in the public files of the ARAs and will be available for inspection by any interested person.

BILLING CODE 8010-01-M

FORM TA-2 : SECURITIES AND EXCHANGE COMMISSION : OMB No.
 JUNE 30, : Division of Market Regulation : XXXX-XXXX
 19::: : Washington, D.C. 20549 :
 : :
 Regulator/ : FORM FOR REPORTING ACTIVITIES AS A TRANSFER : Expiration
 File Number : AGENT REGISTERED PURSUANT TO SECTION 17A : Date
 08::/::::: : OF THE SECURITIES EXCHANGE ACT OF 1934 : XX/30/88

GENERAL: Form TA-2 is to be used by transfer agents registered pursuant to Section 17A of the Securities Exchange Act of 1934 for filing the annual report of transfer agent activities with the Securities and Exchange Commission. Read all instructions before completing this Form. Please print or type all responses.

A TRANSFER AGENT THAT RECEIVED FEWER THAN 500 ITEMS FOR TRANSFER AND FEWER THAN 500 ITEMS FOR PROCESSING IN THE SIX MONTHS ENDING JUNE 30 OF THE YEAR FOR WHICH THIS FORM IS BEING FILED AND DOES NOT MAINTAIN MASTER SECURITYHOLDER FILES FOR MORE THAN 1000 INDIVIDUAL SECURITYHOLDER ACCOUNTS AS OF JUNE 30 OF THE YEAR FOR WHICH THIS FORM IS BEING FILED IS ONLY REQUIRED TO COMPLETE PAGE ONE AND THE EXECUTION SECTION ON PAGE TWO.

1. Appropriate regulatory agency (check one box only)

Comptroller of the Currency ☐
 Board of Governors of the Federal Reserve System ☐
 Federal Deposit Insurance Corporation ☐
 Securities and Exchange Commission ☐

2. Full name of Registrant as stated in Question 3a of Form TA-1:

.....
 (Name)

 (Name continued)

IF THE RESPONSE TO ANY QUESTION IS NONE OR ZERO, ENTER "0"

3. Number of items (in thousands) received during the six months ended June 30 for:

a. transfer
 b. processing (outside registrar function)

4. Number of individual securityholder accounts (in thousands) maintained as of June 30:

a. corporate equity and debt securities
 b. investment company securities
 c. limited partnership securities
 d. municipal debt securities

5. Number of securities issues for which registrant acts in the following capacities:

	corporate debt & equity	invest. company	limited partshp.	municipal debt	other exempt issues
a. receives items for transfer and maintains the master securityholder files	::::::	::::::	::::::	::::::	::::::
b. receives items for transfer but does not maintain the master securityholder files	::::::	::::::	::::::	::::::	::::::
c. does not receive items for transfer but maintains the master securityholder files	::::::	::::::	::::::	::::::	::::::

6. Aggregate debits and credits of securities record differences, existing for more than 30 days, as of June 30:

	Agent prior	current
a. number of issues	::::::	::::::
b. market value (in thousands of dollars)	\$:::::	\$:::::

7. Scope of certain additional types of activities performed:

a. transfer agent custodian arrangements (TACs):	
i. number of issues	::::::
ii. number of shares (in thousands)	::::::
iii. number of institutions for which this activity is performed	::::
b. dividend reinvestment plan services are provided:	
i. number of issues	::::::
c. dividend disbursing or paying agent activities conducted during the preceding twelve months:	
i. number of issues	::::::
ii. amount (in millions of dollars)	\$:::::

8. Number of open-end investment company (mutual fund) transactions (excluding dividend and distribution postings) processed:

a. total number (in thousands)	::::::
b. number processed on a date other than date of receipt of order	::::::
c. number of transactions processed on other than on date of receipt of order, expressed as a percentage of total transactions processed	:::::::::

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

EXECUTION: The registrant submitting this Form, and the person executing the Form, hereby represent that all the information contained in the Form is true, correct and complete.

Official responsible for Form:

_____	_____
(Manual signature)	Title
::::::::::::::::::::::::::::::::	:/:/
(First name, Middle name, Last name)	MO DAY YR

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed SEC Supplement to Form TA-1. The Analysis notes that the objective of the SEC Supplement to Form TA-1 is to enable a more thorough review of transfer agents registering with the Commission. The SEC Supplement to Form TA-1 would require that names of all owners and other persons in control positions at independent, non-issuer transfer agencies must be disclosed, and the existence of prior violations of securities-related laws and rules must be reported. Further, the SEC Supplement requires owners and control persons to disclose whether they had ever been found to have been a cause of a firm having its authority to do business denied, restricted, suspended or revoked. Transfer agents would also be required to amend the SEC Supplement if information previously reported therein becomes incomplete, inaccurate or misleading. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Randy G. Goldberg, Esq., (202) 272-2365, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified that the amendment to Rule 17Ac2-1, the revisions to form TA-1, the proposed Rule 17Ac2-1 and the proposed Form TA-2 will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The information collection requirement imposed by Forms TA-1 and TA-2 has been submitted to the Office of Management and Budget for clearance.

By the Commission,
Dated: April 17, 1985,
John Wheeler,
Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed Rule 17Ac2-1 and Form TA-2, and the amendment to Rule 17Ac2-1(c) and to Form TA-1, set forth in Securities Exchange Act Release No. 34-21950, if promulgated, will not have a significant economic impact on a

substantial number of small entities. The reason for this certification is that Form TA-1 simply requests basic identification information about transfer agents who are applying for registration. Rule 17Ac2-2, which requires transfer agents to file an annual report on Form TA-2, provides that transfer agents that receive fewer than 500 items for transfer and fewer than 500 items for processing in the six months ending June 30 of the year in which the form is being filed, and do not maintain security-holder files for more than 1,000 individual security-holder accounts as of June 30 of the year for which the form is being filed, are required to answer only two identification questions and two basic questions which demonstrate their entitlement to omit the remainder of the Form. Pursuant to Rule 17Ad-6, transfer agents are required to maintain the information requested by one of these basic questions, and the information requested by the other basic question is readily available. Therefore, Form TA-2 would not have a significant economic impact on small transfer agents. The amendment to Rule 17Ac2-1(c) increases the time period for correction of information contained in Form TA-1 from twenty-one days to sixty days. The amendment will provide transfer agents with substantially more time to amend their registration form, and will therefore have no significant economic impact on small entities.

Dated: April 17, 1985.
John S.R. Shad,
Chairman.
[FR Doc. 9775 Filed 4-22-85; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-55-83]

Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the credit for clinical testing expenses for certain drugs for rare diseases or conditions. The credit was enacted by the Orphan Drug Act. The regulations would provide the public with the guidance needed to comply with the law

and would affect taxpayers seeking to obtain the credit.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 24, 1985. These provisions are proposed to be effective immediately upon publication in a Treasury decision. They will apply for purposes of determining if and to what extent amounts paid or incurred after December 31, 1982, and before January 1, 1988, qualify for the credit.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-55-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-55-83), 202-566-3297, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) in order to conform the regulations to sections 28 (formerly 44H) and 280C (b) (formerly 280C(c)) of the Internal Revenue Code of 1954, relating to the credit for clinical testing expenses for certain drugs for rare diseases or conditions. Sections 44H and 280C(c) were added by section 4 of the Orphan Drug Act (96 Stat. 2053). Sections 44H and 280C(c) were subsequently amended by sections 471(c)(1), 474(g), 474(r)(10) (A), (C), and (D), and 612 (e) (1) of the Tax Reform Act of 1984 (Pub. L. 98-369). The proposed amendments also conform the regulations under section 28 to reflect section 526(a)(2) of the Federal Food, Drug, and Cosmetic Act, as amended by section 4 (a) of the Health Promotion and Disease Prevention Act of 1984 (Pub. L. 98-551). The proposed regulations are to be issued under the authority contained in section 28(d)(5), 280C(b)(3), and 7805 of the Internal Revenue Code of 1954 (96 Stat. 2055, 26 U.S.C. 28(d)(5); 96 Stat. 2055, 26 U.S.C. 280C(c)(3); 68A Stat. 917, 26 U.S.C. 7805).

Explanation of Provisions

In General

The Orphan Drug Act enacted a credit against income tax for clinical testing expenses for certain drugs for rare diseases or conditions. The credit, codified in section 28 of the Internal Revenue Code of 1954, is equal to 50 percent of the qualified clinical testing expenses for a taxable year. Only

qualified clinical testing expenses paid or incurred by the taxpayer after December 31, 1982, and before January 1, 1988, are creditable.

Qualified Clinical Testing Expenses

Section 28(b)(1) defines qualified clinical testing expenses, in general, as amounts which are paid or incurred by the taxpayer during the taxable year which would constitute "qualified research expenses" within the meaning of section 30(b) as modified by section 28(b)(1)(B). For purposes of section 28, section 28(b)(1)(D) provides that section 30 and the regulations thereunder shall be deemed to remain in effect after December 31, 1985.

Section 28(b)(1)(C) excludes from qualified clinical testing expenses any amount which would otherwise constitute qualified clinical testing expenses to the extent such amount is funded by a grant, contract, or otherwise by another person (or any governmental entity). The proposed regulations provide that the determination of the extent of funding will be made in light of all of the facts and circumstances.

In addition, the proposed regulations provide that, if a taxpayer conducting clinical testing with respect to the designated drug for another person retains no substantial rights in the clinical testing under the agreement providing for the clinical testing, the clinical testing expenses are treated as fully funded for purposes of section 28(b)(1)(C). If the taxpayer retains substantial rights in the clinical testing, the clinical testing expenses are generally funded to the extent of the payments (and fair market value of any property at the time of transfer) to which the taxpayer becomes entitled by conducting the clinical testing. The provisions concerning the extent to which clinical testing expenses are funded shall be applied separately to each designated drug. The proposed regulations provide further that if, at the time the taxpayer files its return for a taxable year, it is impossible to determine to what extent some or all of the qualified clinical testing expenses may be funded, the taxpayer shall treat the clinical testing expenses as funded for purposes of that return. When the amount of funding for qualified clinical testing expenses is finally determined under the regulations, the taxpayer should amend the return and any interim returns to reflect the amount of funding for qualified clinical testing expenses.

Clinical Testing

Section 28(b)(2)(A) defines clinical testing as any human clinical testing

which (1) is carried out under section 505(i) of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder for the purpose of testing a drug for a rare disease or condition (as defined in section 28(d)(1)); (2) occurs after the date the drug is designated as a drug for a rare disease or condition under section 526 of the Federal Food, Drug, and Cosmetic Act, and before the date on which an application for the designated drug is approved under section 505(b) of that Act; and (3) is conducted by or on behalf of the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies. The proposed regulations provide that testing is considered to be human clinical testing to the extent that it uses human subjects, *i.e.*, individuals who are participants in research, either as recipients of the drug or as controls, to determine the effect of the designated drug on humans and is necessary for the designated drug to be approved under section 505(b). Further, the proposed regulations provide that human clinical testing is carried out under section 505(i) only if the primary purpose of the human clinical testing is to ascertain the data necessary to qualify the designated drug for sale in the United States, and not to ascertain data unrelated or only incidentally related to that needed to qualify the designated drug. Whether or not this primary purpose test is met shall be determined in light of all the facts and circumstances.

Finally, the proposed regulations do not provide a rule dealing with the treatment of biological products under these provisions. The language of section 28(b)(2)(A) (i) and (ii)(II) of the Code refers only to drugs approved under section 505 of the Federal Food, Drug, and Cosmetic Act as within the definition of clinical testing. Accordingly, it appears that biological products are not within the purview of section 28 since such products are not approved under that Act.

Rare Disease or Condition

Section 28(d)(1) defines a rare disease or condition as any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date of such drug is designated under section 526 of

the Federal Food, Drug, and Cosmetic Act.

The proposed regulations provide rules for computing the cost of developing and making available in the United States the designated drug (as distinguished from creditable costs for clinical testing). The taxpayer shall include in those costs of developing and making available only the costs that the taxpayer (or any person whose right to make sales of the drug is directly or indirectly derived from the taxpayer, *e.g.*, a licensee or transferee) has incurred or reasonably expects to incur (to the extent that the costs are not funded by another person) in developing and making available in the United States the designated drug for the disease or condition for which it is designated.

For example, if, prior to the designation under section 526, the taxpayer incurred costs of \$125,000 to test the drug for the rare disease or condition for which it is subsequently designated and incurred \$500,000 to test the same drug for other diseases, and if, on the date of designation, the taxpayer expects to incur costs of \$1.2 million to test the drug for the rare disease or condition for which it is designated, the taxpayer includes in its cost computation both the \$125,000 incurred prior to designation and the \$1.2 million expected to be incurred after designation to test the drug for the rare disease or condition for which it is designated. The taxpayer's cost computation is to include numerous cost items incurred after the first indication of an orphan application for the designated drug including general overhead, depreciation costs, and liability insurance premiums to the extent that the taxpayer can demonstrate that these costs are properly allocated to the designated drug under the established standards of financial accounting and reporting of research and development costs.

The proposed regulations also provide that in the case where the costs incurred or expected to be incurred in developing and making available the designated drug for the disease or condition for which it is designated are also incurred or expected to be incurred in the developing and making available in the United States the same drug for one or more other diseases or conditions (whether or not they are also designated or expected to be designated), the costs are to be allocated between the cost of developing and making available the designated drug for the disease or condition for which the drug is designated and the cost of developing

and making available the designated drug for the other diseases or conditions. This allocation is to be made on the basis of the ratio of the expected amount of sales in the United States of the designated drug for the disease or condition for which the drug is designated to the total expected amount of sales in the United States of the designated drug.

The proposed regulations further provide that in determining whether the taxpayer's costs will be recovered from sales in the United States of the designated drug for the rare disease or condition for which the drug is designated, the taxpayer shall include anticipated sales by the taxpayer or any person whose right to make such sales is directly or indirectly derived from the taxpayer (such as a licensee or transferee). The proposed regulations also require that the taxpayer keep records sufficient to substantiate the cost and sales estimates made pursuant to the above provisions. The records shall be retained so long as the contents thereof may become material in the administration of section 28.

Finally, to reduce the administrative burdens on taxpayers and the Service, to insure that the diseases that Congress expressed a clear intention to cover qualify as rare diseases, and to reflect amendment to section 526(a)(2) of the Federal Food, Drug, and Cosmetic Act, the proposed regulations contain a conclusive presumption when a disease or condition afflicts less than 200,000 persons in the United States. In such a case, it is presumed that there is no reasonable expectation that the taxpayer's cost of developing and making available in the United States the designated drug for such disease or condition will be recovered from sales in the United States of the designated drug for the disease or condition for which it is designated. Examples of such diseases or conditions in 1983 are Duchenne dystrophy, one of the muscular dystrophies; Huntington's disease, a hereditary chorea; myoclonus; Tourette's syndrome; and amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease).

Limitation of Foreign Testing

Section 28(d)(3) provides that expenses paid or incurred with respect to clinical testing conducted outside the United States are not eligible for the credit unless such testing is conducted outside the United States because there is an insufficient testing population in the United States, and such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation

under section 526 applies. The proposed regulations provide that there is an insufficient testing population in the United States if there are not within the United States the number of available and appropriate human subjects needed to produce reliable data from the clinical investigation. The proposed regulations also provide that for purposes of determining whether a person is unrelated to the taxpayer, the rules of section 6134A(d)(3) shall apply except that the number "5" in section 613 (d)(3) (A), (B), and (C) shall be deleted and the number "10" inserted in lieu thereof.

Aggregation of Expenditures and Allocations

Section 28(d)(4) provides that rules similar to those of section 30(f)(1) and (2) shall apply for purposes of section 28. The proposed regulations provide that, in determining the amount of the credit allowable with respect to an organization that at the end of its taxable year is a member of a controlled group of corporations or a member of a group or organizations under common control, all members of the group are treated as a single taxpayer. The proposed regulations also provide special rules for members of a group under common control when one member of the group conducts clinical testing on behalf of another. In such a case, the member conducting the clinical testing shall include in its qualified clinical testing expenses any in-house research expenses for that work and shall not treat any amount received or accrued from the other member as funding the clinical testing. Conversely, the member for whom the clinical testing is conducted shall not treat any part of any amount paid or incurred as a contract research expense. If a member of a group pays or incurs contract research expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as qualified clinical testing expenses. However, if the expenses are not paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member (1) reimburses the member paying or incurring the expenses, and (2) carries on a trade or business to which the clinical testing relates. Further, the proposed regulations explain the allocation rules in the case of an S corporation, an estate or trust, and a partnership.

Election

Section 28(d)(5) provides that section 28 applies to the taxpayer for any taxable year only if such taxpayer makes an election to have section 28 apply for such taxable year. The proposed regulations establish the manner in which the taxpayer is to make the election.

Disallowance of Certain Deductions

Section 280C(b) requires that the taxpayer's deduction for qualified clinical testing expenses must be reduced by the amount allowable as a credit for such expenses under section 28. In addition, section 280C(b) requires a similar rule where the taxpayer capitalizes rather than deducts expenses.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5

U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Nerman Dobyns Hubbard of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.0-1—1.58-8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The following new § 1.28-1 would be added to read as follows:

§ 1.28-1 Credit for clinical testing expenses for certain drugs for rare diseases or conditions.

(a) *General rule.* Section 28 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code. The amount of the credit is equal to 50 percent of the qualified clinical testing expenses (as defined in paragraph (b) of this section) for the taxable year. The credit applies to qualified clinical testing expenses paid or incurred by the taxpayer after December 31, 1982, and before January 1, 1988. The credit is nonrefundable (that is, the credit may not exceed a taxpayer's tax liability for the taxable year).

(b) *Qualified clinical testing expenses.*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section, the term "qualified clinical testing expenses" means the amounts which are paid or incurred during the taxable year which would constitute "qualified research expenses" within the meaning of section 30(b) (relating to the credit for increasing research activities) as modified by section 28(b)(1)(B) and paragraph (b)(2) of this section. For example, amounts paid or incurred for the acquisition of depreciable property used in the

conduct of clinical testing (as defined in paragraph (c) of this section) are not qualified clinical testing expenses.

(2) *Modification of section 30(b).* For purposes of paragraph (b)(1) of this section, section 30(b) is modified by substituting "clinical testing" for "qualified research" each place it appears in paragraph (2) of section 30(b) (relating to in-house research expenses) and paragraph (3) of section 30(b) (relating to contract research expenses). In addition, "100 percent" is substituted for "65 percent" in paragraph (3)(A) of section 30(b).

(3) *Exclusion for amounts funded by another person.*—(i) *In general.* The term "qualified clinical testing expenses" shall not include any amount which would otherwise constitute qualified clinical testing expenses, to the extent such amount is funded by a grant, contract, or otherwise by another person (or any governmental entity). The determination of the extent to which an amount is funded shall be made in light of all the facts and circumstances. For a special rule regarding funding between commonly controlled businesses, see paragraph (d)(5)(iv) of § 1.28-1.

(ii) *Clinical testing in which taxpayer retains no rights.* If a taxpayer conducting clinical testing with respect to the designated drug for another person retains no substantial rights in the clinical testing under the agreement providing for the clinical testing, the taxpayer's clinical testing expenses are treated as fully funded for purposes of section 28(b)(1)(C). Thus, for example, if the taxpayer incurs clinical testing expenses under an agreement that confers on another person the exclusive right to exploit the results of the clinical testing, those expenses do not constitute qualified clinical testing expenses because they are fully funded under this paragraph (b)(3)(ii). Incidental benefits to the taxpayer from the conduct of the clinical testing (for example, increased experience in the field of human clinical testing) do not constitute substantial rights in the clinical testing.

(iii) *Clinical testing in which taxpayer retains substantial rights.*—(A) *In general.* If a taxpayer conducting clinical testing with respect to the designated drug for another person retains substantial rights in the clinical testing under the agreement providing for the clinical testing, the clinical testing expenses are funded to the extent of the payments (and fair market value of any property at the time of transfer) to which the taxpayer becomes entitled by conducting the clinical testing. Except as otherwise provided in paragraph (b)(3)(iii)(B) of this section, the taxpayer shall reduce the amount

paid or incurred by the taxpayer for the clinical testing expenses that would, but for section 28(b)(1)(C), constitute qualified clinical testing expenses of the taxpayer by the amount of the funding determined under the preceding sentence. Rights retained in the clinical testing are not treated as property for purposes of this paragraph (b)(3)(iii)(A). If the property that is transferred to the taxpayer is to be consumed in the clinical testing (for example, supplies), the taxpayer should exclude the value of that property from both the payments received and the expenses paid or incurred for the clinical testing.

(B) *Pro rata allocation.* If the taxpayer can establish to the satisfaction of the district director—

(1) The total amount of clinical testing expenses,

(2) That the total amount of clinical testing expenses exceeds the funding, and

(3) That the otherwise qualified clinical testing expenses (that is, the expenses which would be qualified clinical testing expenses if there were no funding) exceed 65 percent of the funding.

the taxpayer may allocate the funding pro rata to non-qualified and otherwise qualified clinical testing expenses, rather than allocating it 100 percent to the otherwise qualified clinical testing expenses (as provided in paragraph (b)(3)(iii)(A) of this section).

(C) *Drug by drug determination.* The provisions of this paragraph (b)(3) shall be applied separately to each designated drug tested by the taxpayer.

(iv) *Funding for qualified clinical testing expenses determinable only in subsequent taxable years.* If, at the time the taxpayer files its return for a taxable year, it is impossible to determine to what extent some or all of the qualified clinical testing expenses may be funded, the taxpayer shall treat the clinical testing expenses as fully funded for purposes of that return. When the amount of funding for qualified clinical testing expenses is finally determined, the taxpayer should amend the return and any interim returns to reflect the amount of funding for qualified clinical testing expenses.

(4) *Special rule governing the application of section 30(b) beyond its expiration date.* For purposes of section 28 and this section, section 30(b), as amended, and the regulations thereunder shall be deemed to remain in effect after December 31, 1985.

(c) *Clinical testing.*—(1) *In general.* The term "clinical testing" means any human clinical testing which—

(i) Is carried out under an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) and the regulations relating thereto (21 CFR Part 312) for the purpose of testing a drug for a rare disease or condition as defined in paragraph (d)(1) of this section.

(ii) Occurs after the date the drug is designated as a drug for a rare disease or condition under section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb), and before the date on which an application for the designated drug is approved under section 505(b) of that Act (21 U.S.C. 355(b)), and

(iii) Is conducted by or on behalf of the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

Human clinical testing shall be taken into account under this paragraph only to the extent that the testing relates to the use of a drug for the rare disease or condition for which the drug was designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(2) *Definition of "human clinical testing."* Testing is considered to be human clinical testing only to the extent that it uses human subjects to determine the effect of the designated drug on humans and is necessary for the designated drug to be approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder (21 CFR Part 314). For purposes of this subparagraph, a human subject is an individual who is a participant in research, either as a recipient of the drug or as a control. A subject may be either a healthy individual or a patient.

(3) *Definition of "carried out under" section 505(i).* Human clinical testing is not carried out under section 505(i) of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder (21 CFR Part 312) unless the primary purpose of the human clinical testing is to ascertain the data necessary to qualify the designated drug for sale in the United States, and not to ascertain data unrelated or only incidentally related to that needed to qualify the designated drug. Whether or not this primary purpose test is met shall be determined in light of all of the facts and circumstances.

(d) *Definition and special rules—(1) Definition of "rare disease or condition"—(i) In general.* The term "rare disease or condition" means any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States (as

defined in section 7701(a)(9)) a drug for such disease or condition will be recovered from sales in the United States (as so defined) of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date of such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act. See paragraph (d)(1)(v) of this section for a presumption relating to whether a disease or condition is a rare disease or condition.

(ii) *Cost of developing and making available the designated drug—(A) In general.* Except as otherwise provided in this subdivision, the taxpayer's computation of the cost of developing and making available in the United States the designated drug shall include only the costs that the taxpayer (or any person whose right to make sales of the drug is directly or indirectly derived from the taxpayer, e.g., a licensee or transferee) has incurred or reasonably expects to incur in developing and making available in the United States the designated drug for the disease or condition for which it is designated. For example, if, prior to designation under section 526, the taxpayer incurred costs of \$125,000 to test the drug for the rare disease or condition for which it is subsequently designated and incurred \$500,000 to test the same drug for other diseases, and if, on the date of designation, the taxpayer expects to incur costs of \$1.2 million to test the drug for the rare disease or condition for which it is designated, the taxpayer shall include in its cost computation both the \$125,000 incurred prior to designation and the \$1.2 million expected to be incurred after designation to test the drug for the rare disease or condition for which it is designated. The taxpayer shall not include the \$500,000 incurred to test the drug for other diseases.

(B) *Exclusion of costs funded by another person.* In computing the cost of developing and making available in the United States the designated drug, the taxpayer shall not include any cost incurred or expected to be incurred by the taxpayer to the extent that the cost is funded or is reasonably expected to be funded (determined under the principles of paragraph (b)(3)) by a grant, contract, or otherwise by another person (or any governmental entity).

(C) *Computation of cost.* The cost computation shall use only reasonable costs incurred after the first indication of an orphan application for the designated drug. Such costs shall include the costs of obtaining data needed, and of meetings to be held, in

connection with a request for FDA assistance under section 525 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa) or a request for orphan designation under section 526 of that Act; costs of determining patentability of the drug; costs of screening, animal and clinical studies; costs associated with preparation of a Notice of Claimed Investigational Exemption for a New Drug (IND) and a New Drug Application (NDA); costs of possible distribution of drug under a "treatment" protocol; costs of development of a dosage form; manufacturing costs; distribution costs; promotion costs; costs to maintain required records and reports; and costs of the taxpayer in acquiring the right to market a drug from the owner of that right prior to designation. The taxpayer shall also include general overhead, depreciation costs and premiums for insurance against liability losses to the extent that the taxpayer can demonstrate that these costs are properly allocable to the designated drug under the established standards of financial accounting and reporting of research and development costs.

(D) *Allocation of common costs.* Costs for developing and making available the designated drug for both the disease or condition for which it is designated and one or more other diseases or conditions. In the case where the costs incurred or expected to be incurred in developing and making available the designated drug for the disease or condition for which it is designated are also incurred or expected to be incurred in developing and making available in the United States the same drug for one or more other diseases or conditions (whether or not they are also designated or expected to be designated), the costs shall be allocated between the cost of developing and making available the designated drug for the disease or condition for which the drug is designated and the cost of developing and making available the designated drug for the other diseases or conditions. The amount of the common costs to be allocated to the cost of developing and making available the designated drug for the disease or condition for which it is designated is determined by multiplying the common costs by a fraction the numerator of which is the sum of the expected amount of sales in the United States of the designated drug for the disease or condition for which the drug is designated and the denominator of which is the total expected amount of sales in the United States of the designated drug. For example, if prior to designation, the taxpayer incurs (among other costs)

costs of \$100,000 in testing the designated drug for its toxic effect on animals (without reference to any disease or condition), and if the taxpayer expects to recover \$500,000 from sales in the United States of the designated drug for disease X, the disease for which the drug is designated, and further expects to recover another \$1.5 million from the sales in the United States of the designated drug for disease Y, the taxpayer must allocate a proportionate amount of the common costs of \$100,000 to the cost of developing and making available the designated drug for both disease X and disease Y. Since the ratio of the expected amount of sales in the United States of the designated drug for disease X to the total of both the expected amount of sales in the United States of the designated drug for disease X and the expected amount of sales in the United States of the designated drug for disease Y is $\$500,000/\$2,000,000$, 25% of the common costs of \$100,000 (i.e., \$25,000) is allocated to the cost of developing and making available the designated drug for disease X.

(iii) *Recovery from sales.* In determining whether the taxpayer's cost described in paragraph (d)(1)(ii) of this section will be recovered from sales in the United States of the designated drug for the disease or condition for which the drug is designated, the taxpayer shall include anticipated sales by the taxpayer or any person whose right to make such sales is directly or indirectly derived from the taxpayer (such as a licensee or transferee). The anticipated sales shall be based upon the size of the anticipated patient population for which the designated drug would be useful, including the following factors: the degree of effectiveness and safety of the designated drug, if known; the projected fraction of the anticipated patient population expected to be given the designated drug and to continue to take it; other available agents and other types of therapy; the likelihood that superior agents will become available within a few years; and the number of years during which the designated drug would be exclusively available, e.g., under a patent.

(iv) *Recordkeeping requirements.* The taxpayer shall keep records sufficient to substantiate the cost and sales estimates made pursuant to this paragraph (d)(1). The records required by this paragraph (d)(1)(iv) shall be retained so long as the contents thereof may become material in the administration of section 28.

(v) *Presumption that disease or condition is "rare."* If a disease or

condition afflicts less than 200,000 persons in the United States (on the date of the determination by the Food and Drug Administration concerning whether the disease or condition is rare), it is conclusively presumed that there is no reasonable expectation that the taxpayer's cost of developing and making available in the United States the designated drug for such disease or condition will be recovered from sales in the United States of the designated drug for the disease or condition for which it is designated. Examples of such diseases or conditions in 1983 are Duchenne dystrophy, one of the muscular dystrophies; Huntington's disease, a hereditary chorea; myoclonus; Tourette's syndrome; and amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease).

(2) *Tax liability limitation—(i) Taxable years beginning after December 31, 1983.* The credit allowed by section 28 shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under—

(A) Section 21 (relating to expenses for household and dependent care services necessary for gainful employment),

(B) Section 22 (relating to the elderly and permanently and totally disabled),

(C) Section 23 (relating to residential energy),

(D) Section 24 (relating to contributions to candidates for public office),

(E) Section 25 (relating to interest on certain home mortgages), and

(F) Section 27 (relating to the taxes on foreign countries and possessions of the United States).

(ii) *Taxable years beginning before January 1, 1984.* The credit allowed by section 28 shall not exceed the amount of the tax imposed by chapter 1 of the Internal Revenue Code for the taxable year, reduced by the sum of the credits allowable under the following sections as designated prior to the enactment of the Tax Reform Act of 1984 (Pub. Law 98-369):

(A) Section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds),

(B) Section 33 (relating to taxes of foreign countries and possessions of the United States),

(C) Section 37 (relating to the retirement income),

(D) Section 38 (relating to investment in certain depreciable property),

(E) Section 40 (relating to expenses of work incentive programs),

(F) Section 41 (relating to contributions to candidates for public office),

(G) Section 44 (relating to purchase of new principal residence),

(H) Section 44A (relating to expenses for household and dependent care services necessary for gainful employment),

(I) Section 44B (relating to employment of certain new employees),

(J) Section 44C (relating to residential energy),

(K) Section 44D (relating to producing fuel from a nonconventional source),

(L) Section 44E (relating to alcohol used as fuel),

(M) Section 44F (relating to increasing research activities), and

(N) Section 44G (relating to employee stock ownership).

The term "tax imposed by chapter 1," as used in this paragraph, does not include any tax treated as not imposed by chapter 1 of the Internal Revenue Code under the last sentence of section 53 (a).

(3) *Special limitations on foreign testing—(i) Clinical testing conducted outside of the United States—In general.* Except as otherwise provided in this subparagraph, expenses paid or incurred with respect to clinical testing conducted outside the United States (as defined in section 7701(a)(9)) are not eligible for credit under this section. Thus, for example, wages paid an employee clinical investigator for clinical testing conducted in medical facilities in the United States and Mexico generally must be apportioned between the clinical testing conducted within the United States and the clinical testing conducted outside the United States, and only the wages apportioned to the clinical testing conducted within the United States are qualified clinical testing expenses.

(ii) *Insufficient testing population in the United States—(A) In general.* If clinical testing is conducted outside of the United States because there is an insufficient testing population in the United States, and if the clinical testing is conducted by a United States person (as defined in section 7701(a)(30)) or is conducted by any other person unrelated to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies, then the expenses paid or incurred for clinical testing conducted outside of the United States are eligible for the credit provided by section 28.

(B) *"Insufficient testing population."* The testing population in the United States is insufficient if there are not within the United States the number of available and appropriate human

subjects needed to produce reliable data from the clinical investigation.

(C) *"Unrelated to the taxpayer."* For the purpose of determining whether a person is unrelated to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder applies, the rules of section 613A(d)(3) shall apply except that the number "5" in section 613A(d)(3) (A), (B), and (C) shall be deleted and the number "10" inserted in lieu thereof.

(4) *Special limitation for corporations to which section 934 (b) or section 936 applies.* Expenses paid or incurred for clinical testing conducted either inside or outside the United States by a corporation to which section 934(b) (relating to limitation on reduction in income tax liability incurred to the Virgin Islands) applies or to which an election under section 936 (relating to Puerto Rico and possession tax credit) applies are not eligible for the credit under section 28.

(5) *Aggregation of expenditures—(i) Controlled group of corporations; organizations under common control—(A) In general.* In determining the amount of the credit allowable with respect to an organization that at the end of its taxable year is a member of a controlled group of corporations or a member of a group of organizations under common control, all members of the group are treated as a single taxpayer and the credit (if any) allowable to the member is determined on the basis of its proportionate share of the qualified clinical testing expenses of the aggregated group.

(B) *Definition of controlled group of corporations.* For purposes of this section, the term "controlled group of corporations" shall have the meaning given to the term by section 30(f)(5).

(C) *Definition of organization.* For purposes of this section, an organization is a sole proprietorship, a partnership, a trust, an estate, or a corporation, that is carrying on a trade or business (within the meaning of section 162). For purposes of this section, any corporation that is a member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business.

(D) *Determination of common control.* Whether organizations are under common control shall be determined under the principles set forth in paragraphs (b)–(g) of 26 CFR § 1.52–1 except that the words "singly or" in 1.52–1(d)(1)(i) of the regulations shall be treated as deleted.

(ii) *Tax accounting periods used—(A) In general.* The credit allowable to a

member of a controlled group of corporations or a group of organizations under common control is that member's share of the aggregate credit computed as of the end of such member's taxable year.

(B) *Special rule where the timing of clinical testing is manipulated.* If the timing of clinical testing by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, the district director may require all members of the group to calculate the credit in the current taxable year and all future years by using the "conformed years" method. Each member computing a credit under the "conformed years" method shall compute the credit as if all members of the group had the same taxable year as the computing member.

(iii) *Membership during taxable year in more than one group.* An organization may be a member of only one group for a taxable year. If, without application of this paragraph (d)(5)(iii), an organization would be a member of more than one group at the end of its taxable year, the organization shall be treated as a member of the group in which it was included for its preceding taxable year. If the organization was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the organization shall designate in its timely filed return the group in which it is being included. If the return for a taxable year is due before May 1, 1985, the organization may designate its group membership through an amended return for that year filed on or before April 30, 1985. If the organization does not so designate, then the district director with audit jurisdiction of the return will determine the group in which the business is to be included.

(iv) *Intra-group transactions.* (A) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the credit, transactions between members of the group are generally disregarded.

(B) *In-house research expenses.* If one member of a group conducts clinical testing on behalf of another member, the member conducting the clinical testing shall include in its qualified clinical testing expenses any in-house research expenses for that work and shall not treat any amount received or accrued from the other member as funding the clinical testing. Conversely, the member for whom the clinical testing is conducted shall not treat any part of any amount paid or incurred as a contract

research expense. For purposes of determining whether the in-house research for that work is clinical testing, the member performing the clinical testing shall be treated as carrying on any trade or business carried on by the member on whose behalf the clinical testing is performed.

(C) *Contract research expenses.* If a member of a group pays or incurs contracts research expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as qualified clinical testing expenses. However, if the expenses are not paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member—

(1) Reimburses the member paying or incurring the expenses, and

(2) Carries on a trade or business to which the clinical testing relates.

(D) *Lease payments and payments for supplies.* The extent to which amounts paid or incurred (1) to another member of the group for the lease of personal property owned by a person outside the group, or (2) to another member of the group for supplies, are to be taken into account as in-house research expenses for purposes of section 28 shall be determined under the principles set forth in regulations under section 30 (see paragraph (e) (4) and (5) of proposed § 1.44F–6 published in the Federal Register for January 21, 1983 (48 FR 2790)).

(6) *Allocations—(i) Pass-through in the case of an S corporation.* In the case of an S corporation (as defined in section 1361), the amount of the credit for qualified clinical testing expenses computed for the corporation for any taxable year shall be allocated among the persons who are shareholders of the corporation during the taxable year according to the provisions of section 1366 and section 1377.

(ii) *Pass-through in the case of an estate or a trust.* In the case of an estate or a trust, the amount of the credit for qualified clinical testing expenses computed for the estate or trust for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(iii) *Pass-through in the case of a partnership—(A) In general.* In the case of a partnership, the credit for qualified clinical testing expenses computed for the partnership for any taxable year shall be apportioned among the persons who are partners during the taxable

year in accordance with section 704 and the regulations thereunder.

(B) *Certain partnership non-business expenditures.* A partner's share of an in-house research expense or contract research expense paid or incurred by a partnership other than in carrying on a trade or business of the partnership constitutes a qualified clinical testing expense of the partner if—

(1) The partner is entitled to make independent use of the result of the clinical testing, and

(2) The clinical testing expense paid or incurred in carrying on the clinical testing would have been paid or incurred by the partner in carrying on a trade or business of the partner if the partner had carried on the clinical testing that was in fact carried on by the partnership.

(C) *Apportionment.* Qualified clinical testing expenses to which paragraph (d)(6)(iii)(B) of this section applies shall be apportioned among the persons who are partners during the taxable year in accordance with section 704 and the regulations thereunder. For purposes of section 28, these expenses shall be treated as paid or incurred directly by the partners rather than by the partnership. Thus, the partnership shall disregard these expenses in computing the credit to be apportioned under paragraph (d)(6)(iii)(A) of this section, and each partner shall aggregate the portion of these expenses allocated to the partner with other qualified clinical testing expenses of the partner in making the computations under section 28.

(iv) *Year in which taken into account.* An amount apportioned to a person under paragraph (d)(6) of this section shall be taken into account by the person in the taxable year of such person in which or with which the taxable year of the corporation, estate, trust, or partnership (as the case may be) ends.

(v) *Credit allowed subject to limitation.* Any person to whom any amount has been apportioned under paragraph (d)(6) (i), (ii), or (iii) of this section is allowed, subject to the limitation provided in section 28(d)(2), a credit for that amount.

(7) *Manner of making an election.* To make an election to have section 28 apply for its taxable year, the taxpayer shall file Form 8765 (Credit for Increasing Research Activities (or for claiming the orphan drug credit)) containing all the information required by that form.

Par. 2. A new § 1.280C-3 would be added to read as follows:

§ 1.280C-3 Disallowance of certain deductions for qualified clinical testing expenses when section 28 credit is allowable.

(a) *In general.* If a taxpayer is entitled to a credit under section 28 for qualified clinical testing expenses (as defined in section 28(b)), it must reduce the amount of any deduction for qualified clinical testing expenses paid or incurred in the year the credit is earned by the amount allowable as credit for such expenses (determined without regard to section 28(d)(2)).

(b) *Capitalization of qualified clinical testing expenses.* In a case in which qualified clinical testing expenses are capitalized, the amount chargeable to the capital account for a taxable year must be reduced by the excess of the amount of the credit allowable for the taxable year under section 28 (determined without regard to section 28(d)(2)) over the amount allowable as a deduction for qualified clinical testing expenses (determined without regard to paragraph (a) of this section) for the taxable year. See section 174 and the regulations thereunder.

(c) *Controlled group of corporations; organizations under common control.* In the case of a taxpayer described in paragraph (d)(5) of § 1.28-1 of this chapter (relating to controlled groups of corporations and organizations under common control), paragraphs (a) and (b) of this section shall be applied in accordance with the rules prescribed for aggregation of expenditures under that paragraph.

(d) *Example.* The following example illustrates the application of paragraphs (a) and (b) of this section.

Example. A incurs \$1,000 in clinical testing expenses for which a \$500 credit is allowable under section 28. A also elects under section 174 of the Code to amortize these expenses over a 5-year period beginning in the year the credit is claimed. Under paragraph (a), the current year amortization deduction of \$200 ($\$1,000 \div 5$) is disallowed. Moreover, the amount which would otherwise be capitalized, \$800, is reduced by the excess of the amount of the section 28 credit claimed for the taxable year over the amount of the allowable section 174 amortization deduction for the taxable year, or \$300 ($\$500 - \200). Thus, the amount chargeable to the capital account for the taxable year is \$500 ($\$800 - \300). A is entitled to amortize \$500 over the remaining amortization period, resulting in a deduction of \$125 for each of the remaining four years.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

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BILLING CODE 4830-01-M

31 CFR Part 10

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

AGENCY: Department of the Treasury, Internal Revenue Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes modification of the regulations governing practice before the Internal Revenue Service (31 CFR Part 10) by requiring that those who are enrolled to practice before the Internal Revenue Service renew their enrollment on a periodic basis. A condition of eligibility for renewal of enrollment would be the satisfaction of continuing professional education requirements. The proposal also contemplates a fee for the renewal of enrollment. The fee would be for the purpose of defraying the costs of administering the program. In addition, this notice contains modifications of the regulations reflecting the transfer to the Office of Director of Practice certain functions formerly performed by the Commissioner of Internal Revenue relative to the enrollment of individuals who wish to practice before the Internal Revenue Service.

DATE: Comments must be submitted in writing on or before June 24, 1985. Comments should be sent to the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. ATTN: PM:HR:DP.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice, Internal Revenue Service, Washington, DC 20224, (202) 535-6787.

SUPPLEMENTARY INFORMATION:

Background and Comments

On July 3, 1984, the Treasury Department published in the *Federal Register* (49 FR 27326) an advance notice of proposed rulemaking that would amend the regulations governing practice before the Internal Revenue Service contained in 31 CFR Part 10 (Treasury Department Circular No. 230). The notice addressed the Treasury Department's intent to require those enrolled to practice before the Internal Revenue Service (enrolled agents) to renew their enrollment status on a periodic basis. A condition for renewal would be the satisfaction of continuing education requirements. The basic requirements were delineated in the notice. Written comments on the advance notice were invited and over one hundred were received. Those

comments can be separated into three categories.

(1) Discrimination

The greatest number of commenters believed the scope of the proposal to be unfair. While most endorsed the concept of continuing education, concern was expressed about limiting the requirement to enrolled agents. The position taken was that those eligible to practice before the Internal Revenue Service are attorneys, certified public accountants and enrolled agents. Consequently, they believed the requirement for continuing education should apply to attorneys and certified public accountants as well as to enrolled agents. By limiting the requirement to enrolled agents, the Treasury Department is "discriminating" against them. Some comments contend that attorneys and certified public accountants receive only superficial training in the field of taxation. The commenters expressed belief that the competence level in Federal taxation required for the licensing of those professions is far lower than that required of enrolled agents, while the same privileges are accorded all three categories of practitioners with respect to practice before the Internal Revenue Service.

We endorse the concept that all who practice before the Internal Revenue Service should further their knowledge of Federal tax laws and procedures. Attorneys and certified public accountants are eligible to practice before the Internal Revenue Service under authority of the Agency Practice Act, 5 U.S.C. 500. In pertinent part, that legislation provides:

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

The law eliminated agency-established admission requirements for licensed attorneys who appear before most Federal agencies and for certified public accountants who appear before the Internal Revenue Service. Consequently, the enactment of the legislation obviated the enrollment program insofar as attorneys and certified public

accountants are concerned and left with their respective licensing bodies complete authority to govern their standing as attorneys and certified public accountants.

As a result of the Agency Practice Act, any attorney in good standing or duly qualified certified public accountant may practice before the Internal Revenue Service upon filing with the Internal Revenue Service a declaration of his or her good standing and authority to represent the taxpayer concerned, 31 CFR, 10.3 (a) and (b). If this condition is met (and a proper power of attorney where required is filed), the Internal Revenue Service is required by law to recognize the attorney or certified public accountant. Stated another way, the Internal Revenue Service is prohibited from placing any limitation or qualification on the recognition of an attorney or certified public accountant who has met the conditions of the statute. To require continuing education of an attorney or certified public accountant would not be a condition for renewal of enrollment since they are not enrolled to practice before the Internal Revenue Service by the Treasury Department; to require it as a condition of eligibility to practice before the Internal Revenue Service would be a limitation not permitted by law.

The licensing body of each state has authority to require continuing education of attorneys and certified public accountants who are licensed within that jurisdiction. In this connection, nearly all states have continuing education requirements for certified public accountants and a number impose them on attorneys. The "licensing" body for enrolled agents is the Treasury Department. Consequently, like state licensing bodies with respect to attorneys and certified public accountants, Treasury has sole responsibility for the good standing of enrolled agents. We continue to believe that continuing education is a positive way of helping assure that the enrolled agent community keeps abreast of the volatile and dynamic nature of our tax laws and procedures. In fact, most of those whose comments claimed "discrimination" acknowledged the benefit of continuing education.

(2) Licensed Public Accountants

A number of comments were from enrolled agents who are also licensed public accountants and must meet their respective state licensing authorities' continuing education requirements in order to maintain their good standing. The commenters requested exemption from the requirements of the proposal.

We believe the requirements of the regulations should be applied evenly to all enrolled agents, regardless of licensed public accountant status. An undue hardship is not anticipated for those individuals to meet the continuing education requirements set forth in this notice. We expect that satisfaction of recognized continuing education programs in the field of taxation which meet state requirements also will meet the Treasury Department requirements. Consequently, we believe it is more likely than not that a licensed public accountant will satisfy, through one continuing education program, both his or her state's continuing education requirements and those of the Treasury Department.

(3) Inconvenience

Some of those who commented observed that the unavailability of sufficient courses in certain geographic areas and the registration costs for some courses may make it inconvenient or difficult to meet the continuing education requirements set forth in the advance notice. To address those concerns, the proposed regulations reduce the number of hours from 30 hours per year (90 hours over a three year period) to 24 hours per year (72 hours over a three year period). In addition, the proposal contemplates that qualifying correspondence and/or home study courses may be utilized to satisfy the requirements of the regulations. These will be particularly appropriate for persons who find the availability of other courses inconvenient because of geographic location and/or cost.

Summary of Renewal Requirements

While the requirements for renewal of enrollment were set forth in the advance notice of proposed rulemaking, the following summary is being provided to re-familiarize the reader with the highlights of those requirements and with the modifications made to them.

(A) *Enrollment Renewal Requirements.* All enrolled agents would be required to renew their enrollment every three years in order to maintain good standing and authority to engage in practice before the Internal Revenue Service. This would be a condition for a active enrollment beginning in the year 1987. All individuals enrolled to practice before the Internal Revenue Service would be required to apply for renewal during the period October 1, 1986 to December 31, 1986. The first effective date of renewal would be April 1, 1987. Thereafter, applications for renewal would be required during the period between

October 1, 1989 and December 31, 1989 and between October 1 and December 31 every third year subsequent thereto. A condition for renewal of enrollment would be the satisfaction of continuing education requirements in accordance with the proposed regulations. While the proposal provides for waiver of the mandatory continuing education requirements under certain circumstances, those individuals who receive waivers would be required to make application for renewal of enrollment.

(B) *Qualifying Programs.* It is important that qualifying educational programs be responsive to the needs of a tax practitioner. In this connection, an individual enrolled to practice before the Internal Revenue Service has established a level of knowledge with regard to the Internal Revenue Code and regulations, either through previous experience as an employee of the Internal Revenue Service or by passing the Special Enrollment Examination administered by the Internal Revenue Service. Therefore, the overriding consideration in determining whether a specific program qualifies as acceptable continuing education would be that it be a course of learning in current subject matter which will enhance the professional knowledge of an enrolled agent in Federal taxation or Federal tax related matters. The publication of a comprehensive listing of applicable educational courses or subject matter is not contemplated. Professional knowledge of an enrolled agent is considered to include (but not restricted to) accounting, financial management, business computer science and taxation. Taking a particular course would qualify if it can be demonstrated that the subject matter would provide substantive improvement of the professional knowledge or methods of the enrolled agent. To help ascertain the soundness of a qualifying program, it must be conducted by a sponsor who has met the requirements of the proposal. We also recognize that instructing relevant courses, writing articles and successfully completing the Internal Revenue Service Special Enrollment Examination are ways of demonstrating continuing knowledge. Consequently, such activities could be used to help satisfy the continuing education requirements of the regulations.

(C) *Hours.* Each individual making application for renewal of enrollment to practice before the Internal Revenue Service would be required to complete 72 hours of qualifying continuing education during the three calendar

years preceding each renewal date. A minimum of 16 hours of qualifying continuing education would be required to be completed each calendar year of an enrollment cycle (the three year period). An individual granted initial enrollment during an enrollment cycle would be required to complete two hours of qualifying continuing education for each month enrolled during the initial enrollment cycle. Enrollment for any part of a month would be considered enrollment for the entire month.

In order to effectively implement renewed enrollment for April 1, 1987, all individuals enrolled to practice before the Internal Revenue Service would be required to complete 24 hours of qualifying continuing education during the period between January 1, 1986 and December 31, 1986. Individuals granted initial enrollment during the period between January 1, 1986 and December 31, 1986 would be exempt from the continuing education requirements, but would be required to file a timely application for renewal of enrollment.

(D) *Measurement of Continuing Professional Education Programs.* All programs would be measured in terms of 50-minute contact hours. The shortest recognized program would be one contact hour. The purpose of this standard is to develop uniformity and substance in the activity. A contact hour is defined as 50 minutes of continuous participation in a program. Under this standard, credit would be granted only for full contact hours. A program lasting more than 50 minutes but less than 100 minutes would count only for one hour. For example, a program lasting 100 minutes would be considered two contact hours and a program lasting 90 minutes would be considered one contact hour. When individual segments are fewer than 50 minutes at continuous conferences, conventions and the like, the sum of the segments would be considered one total program, but would be assessed on the basis of a 50-minute contact hour and multiples thereof. For example, two 90-minute segments (180 minutes) at a continuous program would be counted as three contact hours.

For university or college courses, each semester hour credit would equal 15 contact hours. A quarter hour credit would equal 10 contact hours.

(E) *Waiver.* The proposal contemplates waiver of the mandatory continuing education requirement under circumstances warranting it. For example, the waiver would be available in those instances where physical circumstances preclude an enrolled agent from meeting the requirements of

the proposal, e.g., prolonged debilitating illness or extended absence from the country. In all instances, a request for waiver would be required to be accompanied by appropriate documentation and/or explanation the Director of Practice deems necessary. The granting of a waiver would not preclude the requirement for filing a timely application for renewal of enrollment.

(F) *Fees.* It is contemplated that a reasonable renewal fee would be charged each enrolled agent who submits a renewal application. The purpose of the fee is to provide funding for administration of the renewal of enrollment program. The amount of the fee would be established by the Director of Practice and would be non-refundable. Fee information would be published in the renewal material furnished enrolled agents.

(G) *Failure to Renew and/or Satisfy Continuing Professional Education Requirements.* An enrolled agent who fails to make application for renewal or who fails to meet the continuing education requirements would have his or her enrollment placed in an inactive status until such time that an application for renewal of enrollment is filed and/or evidence of compliance with the regulation is provided. During inactive status, the individual would be ineligible to practice before the Internal Revenue Service.

An individual in an inactive status who has not filed an application for renewal of enrollment or has not satisfied the requirements for renewal within three years from the expiration date of his or her last active enrollment, would be considered to have abandoned his or her enrollment and such enrollment would terminate. Eligibility for enrollment must then be reestablished by successful completion of the Internal Revenue Service Special Enrollment Examination.

(H) *Verification.* Under the proposal, the Director of Practice could review the continuing education records of enrolled agents and/or program sponsors in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided. Failure to comply with a request for the appropriate documentation could result in a disqualification of the continuing education hours claimed.

Amendments Relating to Transfer of Functions

On October 31, 1982, certain responsibilities relative to the enrollment of individuals who wish to

practice before the Internal Revenue Service were transferred from the Commissioner of Internal Revenue to the Director of Practice. This proposal updates the regulations to reflect the transfer of those functions. In pertinent part it:

(1) Authorizes the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service;

(2) Provides for appeal to the Secretary of the Treasury from the denial by the Director of Practice of an application for enrollment; and

(3) Authorizes the Director of Practice to empower any person to represent another before the Internal Revenue Service without enrollment for the purpose of a particular matter.

The proposal also modifies 31 CFR 10.1(b) to reflect that the duties of the Director of Practice encompass the discipline of appraisers. This duty has been given the Director of Practice pursuant to section 156 of the Deficit Reduction Act of 1984, 98 Stat. 695, amending 31 U.S.C. 330. A notice of proposed rulemaking implementing such amendment was published in the *Federal Register* (50 FR 7075) on February 20, 1985.

Special Analyses

This rule relates solely to professional services in connection with Internal Revenue Service and Treasury Department proceedings and is not expected to have any significant economic consequences.

Therefore, it has been determined that this rule is not a major rule as defined in Executive Order 12291 and a regulatory impact analysis is not required. It is hereby certified that this rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in this proposed rule has been submitted to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comment on these requirements should be directed to the Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Department of the Treasury, Office of the Secretary. Copies of those comments should be submitted to the Director of Practice at the address previously specified.

Drafting Information

The author of these regulations is Mr. Leslie S. Shapiro, Director of Practice, Department of the Treasury. Other personnel in the Treasury Department participated in the development of the regulations, both as to substance and style.

List of Subjects in 31 CFR Part 10

Administrative rules and procedures, Lawyers, Accountants, Enrolled agents, Enrolled actuaries, Appraisers.

Authority: These proposed rules are issued under authority of Sec. 3, 23 Stat. 258, secs. 2-12, 60 Stat. 237 et seq.; 5 U.S.C. 301; 31 U.S.C. 330; 31 U.S.C. 321.

Proposed Amendments to Regulations

PART 10—[AMENDED]

Accordingly, 31 CFR Part 10 is proposed to be amended as follows:

§ 10.1 [Amended]

1. In § 10.1, paragraph (b) is revised to read as follows:

(b) *Duties.* The Director of Practice shall act upon applications for enrollment to practice before the Internal Revenue Service; institute and provide for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; make inquiries with respect to matters under his jurisdiction; and perform such other duties as are necessary or appropriate to carry out his functions under this part or as are prescribed by the Secretary of the Treasury.

§§ 10.4, 10.5, and 10.7 [Amended]

2. In § 10.4; §§ 10.5 (a), (b), and (c); and § 10.7; in each place where it appears, the word "Commissioner" is removed and the words "Director of Practice" inserted.

3. In § 10.5, paragraph (d) is revised to read as follows:

§ 10.5 Application for enrollment.

(d) *Appeal from denial of application.* The Director of Practice, in denying an application for enrollment, shall inform the applicant as to the reason(s) therefor. The applicant may, within 30 days after receipt of the notice of denial, file a written appeal therefrom, together with his/her reasons in support thereof, to the Secretary of the Treasury. A decision on the appeal will be rendered by the Secretary of the Treasury as soon as practicable.

4. Section 10.6 is revised to read as follows:

§ 10.6 Enrollment.

(a) *Roster.* The Director of Practice shall maintain rosters of all individuals:

(1) Who have been granted active enrollment to practice before the Internal Revenue Service;

(2) Whose enrollment has been placed in an inactive status for failure to meet the requirements for renewal of enrollment;

(3) Who have been disbarred or suspended from practice before the Internal Revenue Service;

(4) Whose offer of consent to resignation from enrollment to practice before the Internal Revenue Service has been accepted by the Director of Practice under § 10.55 of this part; and

(5) Whose application for enrollment has been denied.

(b) *Enrollment card.* The Director of Practice will issue an enrollment card to each individual whose application for enrollment to practice before the Internal Revenue Service is approved after the effective date of this regulation. Each such enrollment card will be valid for the period stated thereon. Enrollment cards issued individuals before January 1, 1987 shall become invalid after March 31, 1987. An individual having an invalid enrollment card is not eligible to practice before the Internal Revenue Service.

(c) *Term of enrollment.* Active enrollment to practice before the Internal Revenue Service is accorded each individual enrolled, so long as renewal of enrollment is effected as provided in this part.

(d) *Renewal of enrollment.* To maintain active enrollment to practice before the Internal Revenue Service, each individual enrolled is required to have his/her enrollment renewed as set forth herein. Failure by an individual to receive notification from the Director of Practice of the renewal requirement will not be justification for circumvention of such requirement.

(1) All individuals enrolled to practice before the Internal Revenue Service before October 1, 1986 shall apply for renewal of enrollment during the period between October 1, 1986 and December 31, 1986. Those who receive initial enrollment between October 1, 1986 and December 31, 1986 may apply for renewal of enrollment by March 1, 1987. The first effective date of renewal will be April 1, 1987.

(2) Thereafter, applications for renewal will be required between October 1, 1989 and December 31, 1989, and between October 1 and December 31 of every third year subsequent thereto. Those who receive initial enrollment during the renewal

application period may apply for renewal of enrollment by March 1 of the following year. The effective date of renewed enrollment will be April 1, 1990, and April 1 of every third year subsequent thereto.

(3) The Director of Practice will notify the individual of renewal of enrollment and will issue a card evidencing such renewal.

(4) A reasonable nonrefundable fee may be charged for each application for renewal filed with the Director of Practice.

(5) Forms required for renewal may be obtained from the Director of Practice, Internal Revenue Service, Washington, DC 20224.

(e) *Condition for renewal: Continuing Professional Education.* In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must provide satisfactory evidence, on a form prescribed by the Director of Practice, of having satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective April 1, 1987.* (i) A minimum of 24 hours of continuing education credit must be completed between January 1, 1986 and December 31, 1986.

(ii) An individual who receives initial enrollment between January 1, 1986 and December 31, 1986 is exempt from the continuing education requirement for the renewal of enrollment effective April 1, 1987, but is required to file a timely application for renewal of enrollment.

(2) *For renewed enrollment effective April 1, 1990 and every third year thereafter.* (i) A minimum of 72 hours of continuing education credit must be completed between January 1, 1987 and December 31, 1989, and during each three year period subsequent thereto. Each such three year period is known as an enrollment cycle.

(ii) A minimum of 16 hours of continuing education credit must be completed in each calendar year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must complete two (2) hours of qualifying continuing education credit for each month enrolled during such enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(f) *Qualifying continuing education.—*
(1) *In General.* To qualify for continuing education credit, a course of learning must:

(i) Be a qualifying program designed to enhance the professional knowledge of an individual in Federal taxation or Federal tax related matters, i.e., programs comprised of current subject

matter in Federal taxation or Federal tax related matters to include accounting, financial management, business computer science and taxation; and

(ii) Be conducted by a qualifying sponsor.

(2) *Qualifying Programs.—*(i) *Formal programs.* Formal qualify as continuing education programs if they:

(A) Require attendance;

(B) Require the program be conducted by a qualified instructor, discussion leader or speaker, i.e., a person whose background, training, education and/or experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Require a written outline which must be retained by the attendee for a three year period following renewal of enrollment.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence of individual study programs completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution.

(iii) *Serving as an instructor, discussion leader or speaker.* One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader or speaker at an educational program which meets the continuing requirements of those attending. In addition, two hours of continuing education credit may be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader or speaker as such programs. It will be the responsibility of the individual claiming such credit to maintain records to verify preparation time. The maximum credit for instruction and preparation may not exceed 25% of the continuing education requirement for an enrollment cycle. Presentation of the same subject matter in an instructor, discussion leader or speaker capacity more than one time during an enrollment cycle will not qualify for continuing education credit.

(iv) *Credit for published articles, books, etc.* Continuing education credit will be awarded for publication on Federal taxation or Federal tax related matters to include accounting, financial management, business computer science, and taxation, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual

enrolled to practice before the Internal Revenue Service. The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It will be the responsibility of the person claiming the credit to maintain records to verify preparation time. The maximum credit for publications may not exceed 25% of the continuing education requirement of any enrollment cycle.

(v) *Periodic examination.* Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by:

(A) Achieving a passing score on each part of the Special Enrollment Examination during the three year period to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must:

(i) Be recognized by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of accounting or law; or file a sponsor agreement with the Director of Practice to obtain approval of the program as of the a qualified continuing education program; and

(ii) Ensure that its program meets the following requirements:

(A) Programs must be developed by individual(s) qualified in the subject matter.

(B) Program subject matter must be current.

(C) Instructors, discussion leaders, and speakers must be qualified with respect to program content.

(D) Programs must include some means for evaluation of technical content and presentation.

(E) Certificates of completion must be provided those who have successfully completed the program.

(F) Records must be maintained by the sponsor to verify completion of the program and attendance by each participant. Such records must be retained for a period of three years following completion of the program.

(h) *Measurement of continuing education coursework.*

(1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, i.e., 50 minutes or multiples thereof.

For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For accredited university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) Recordkeeping requirements.

(1) The individual seeking renewal of enrollment is responsible for documenting all completed continuing education credit hours claimed on an application for renewal of enrollment.

(2) In the case of courses taken for scholastic credit at an accredited university, college or high school, course syllabi and evidence of satisfactory completion of the course are required.

(3) In the case of non-credit courses taken at educational institutions, a signed statement of the hours of attendance must be obtained from the sponsor.

(4) In the case of other qualifying continuing education programs, a course outline and certificate of completion of the course must be retained.

(5) All documentation to support fulfillment of the continuing education requirements must be retained for a period of three years following the date of renewal.

(j) Reporting requirements. (1) Each individual making application for renewal of enrollment is required to report satisfactory completion of the continuing education requirement on the application for renewal form.

(2) Each individual applying for renewal shall provide the information required on the application for renewal form with regard to qualifying continuing professional education credit hours. Such information shall include:

- (i) The name of sponsoring organization;
- (ii) The location of program;
- (iii) The title of program and description of content;
- (iv) The dates attended;
- (v) The credit hours claimed; and
- (vi) The name of instructor, discussion leader, or speaker.

(3) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be provided:

- (i) The name of sponsoring organization;
- (ii) The location of program;
- (iii) The title of program and description of content;

(iv) The dates of program; and

(v) The credit hours claimed.

(4) To receive continuing education credit for publications, the following information must be provided:

- (i) The publisher;
- (ii) The title of publication;
- (iii) A copy of publication; and
- (iv) The date of publication.

(5) Each applicant for renewal is required to sign a statement under penalty of perjury that the information is true and accurate.

(6) The Director of Practice may require an applicant for renewal to file additional information regarding continuing education credit hours claimed. An individual who fails to comply with the request of the Director of Practice may have the continuing education hours claimed disallowed.

(k) Waivers.

(1) Waiver from the continuing education requirements for a given period may be granted by the Director of Practice for the following reasons:

- (i) Health, which prevented compliance with the continuing education requirements;
- (ii) Extended active military duty;
- (iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and
- (iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Director of Practice. Examples of appropriate documentation could be a medical certificate, military orders, etc.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be so notified by the Director of Practice.

(5) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(l) Failure to comply.

(1) An individual who fails to meet the requirements of eligibility for renewal of enrollment will be notified by the Director of Practice. The notice will state the basis for the non-compliance and will provide the individual an opportunity to furnish in writing information relating to the matter within 20 days of the date of the notice. Such information will be considered by the Director of Practice in making a final

determination as to eligibility for renewal of enrollment.

(2) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of non-compliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals for a period of three years. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(3) An individual may satisfy the requirements of renewal of enrollment at any time during his/her inactive enrollment status and will be placed back on the active enrollment roster.

(4) If there has been a failure to satisfy the continuing education requirements during an enrollment cycle, the affected individual may make up the deficiency during his/her period of inactive enrollment by completing the number of unsatisfied continuing education hours. In addition, the individual must complete four (4) hours of continuing education for each month of his/her inactive enrollment status not to exceed 36 hours. Such hours of continuing education may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed in an inactive status.

(5) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. If this is not done, the name of such individual will be removed from the inactive enrollment roster and his/her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this part.

(m) Period of ineligibility. An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action is required to meet the requirements for renewal of enrollment during the period of ineligibility.

(n) Verification. The Director of Practice may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in this part.

5. Section 10.99 is revised to read as follows:

10.99 Effective date of regulations.

The regulations of this part shall become effective on [date of publication] and shall supersede all prior regulations related to this part.

Dated: April 10, 1985.

Margery Waxman,

Acting General Counsel.

[FR Doc. 85-9633 Filed 4-22-85; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[A-5-FRL-2822-4]

Ohio State Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for the notice of proposed rulemaking, published March 5, 1985 (50 FR 8749), for an inter-facility alternative emission control program plan (bubble) between seven metal coating lines and eight degreasers which are located at Harrison Radiator, General Motors Corporation, in Montgomery County, Ohio, has been extended to April 26, 1985. USEPA is taking this action because an extension was requested by Natural Resources Defense Council, Incorporated.

DATE: Comments are now due on or before April 26, 1985.

FOR FURTHER INFORMATION CONTACT:

Uylaine E. McMahan, Regulatory Specialist (5AR-26), Air and Radiation Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-0396.

This notice is issued under authority of sections 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: April 11, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-9716 Filed 4-22-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 704

[OPTS-82016; FRL-2722-7]

Hexachloronorborene; Proposed Submission of Notice of Manufacturer, Import, or Processing and Determination of Significant New Use**Correction**

In FR Doc. 85-4237 beginning on page 7351 in the issue of Friday, February 22, 1985, make the following correction:

§ 704.142 [Corrected]

On page 7355, in the middle column, in § 704.142(a)(5), the formula should read as set forth below:

$$E = \frac{C_a T_a + C_b T_b + \dots + C_n T_n}{8}$$

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION**48 CFR Part 552**

[GSAR Notice No. 5-85]

Identification of Provisions and Clauses

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to § 552.103 of the General Services Administration Acquisition Regulation (GSAR), which would provide a method for identifying provisions and clauses used in solicitations and contracts which are "substantially the same as" FAR or GSAR provisions or clauses so

that readers will be alerted of the fact that the provision or clause is a variation of a FAR or GSAR provision or clause. The intended effect is to improve the regulatory coverage.

DATES: Comments are due in writing not later than May 23, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Sts., NW, Room 4027, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations, 18th and F Sts., NW, Washington, D.C. 20405 (202) 523-3782.

SUPPLEMENTARY INFORMATION:**Impact**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempt certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The proposed regulation will benefit prospective contractors by making it easier for them to identify variations in standard FAR and GSAR provisions and clauses when reviewing solicitations and contracts. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subject in 48 CFR Ch. 5

Government procurement.

(40 U.S.C. 486(c))

Dated: April 10, 1985.

Ida M. Ustad

Acting Director, Office of Acquisition Policy and Regulations.

[FR Doc. 85-9642 Filed 4-22-85; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register

Vol. 50, No. 78

Tuesday, April 23, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Proposed VISTA Guidelines

AGENCY: ACTION.

ACTION: Proposed notice of VISTA Guidelines.

SUMMARY: This notice is intended to clarify and update the guidelines under which the VISTA program will operate. The proposed revisions to the current VISTA Guidelines (effective February 5, 1982) incorporate changes made to Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113), by the amendments of 1984 (Pub. L. 98-288). They are also intended to facilitate the VISTA project approval process and to clarify VISTA's project selection criteria. The proposed revisions are discussed under Supplementary Information.

DATE: Written comments should be submitted no later than May 23, 1985, to Suzanne Gibson Wise, Director of VISTA, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Suzanne Gibson Wise, Director of VISTA, ACTION, 806 Connecticut Avenue, NW., Washington, D.C., (202) 634-9445.

SUPPLEMENTARY INFORMATION: The revised VISTA Guidelines are contained in the following parts:

- Part I—Program Directions
- Part II—Criteria for Selection of VISTA Sponsors and Projects
- Part III—VISTA Project Approval Process

The first Part restates the legislative mandate and overall mission of the VISTA program. It also incorporates the amended language of section 101 of the Act which adds, as an objective of VISTA, the generation of private sector resources and the encouragement of volunteer service at the local level.

The second Part identifies criteria used by ACTION staff in selecting VISTA sponsors and projects. It

incorporates the amended language of section 103 of the Act requiring all VISTA project applications to contain evidence of local support. It also requires ACTION staff to use the Additional Factors cited in Part II, B. 3 in choosing among VISTA project applicants who meet all of the minimum project selection criteria.

The Additional Factors section of the criteria has been revised to include items relating to: (a) Institutionalization of VISTA activities; (b) the track record of the sponsoring organization; (c) adequacy of sponsor-provided support; (d) appropriateness of the VISTA Volunteer role; (e) relationship of volunteer qualifications requested to the project assignment; and (f) maximum utilization of the Volunteers' time.

A long-standing VISTA policy prohibition against volunteer involvement in religious activities as part of their project assignment is also incorporated in this Part.

The third Part describes procedures under which new and renewal VISTA project applications are reviewed and selected. The procedures for new project approvals remain essentially unchanged with final approval authority resting with the Director of VISTA. Final approval authority for second and third year project renewals is delegated to the ACTION Regional Director from the Director of VISTA.

Part III, B. 2 clarifies the project approval process for all existing VISTA projects requesting renewal for a fourth year or more, requesting an increase in their level of volunteers, or proposing a substantial change in the scope of the project.

Part III, C provides ACTION Regional Directors with final approval authority for project extensions of up to six months in order to allow volunteers to complete their terms of service and/or allow projects additional time for institutionalization of VISTA activities.

Part III, D is a new provision advising agencies or organizations applying for VISTA Volunteers of the requirement to comply with Executive Order 12372 as set forth in 45 CFR Part 1233.

Part I—Program Directions

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113) ("the Act"). The statutory mandate of

the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA provides full-time volunteers to local public and private non-profit organizations which have goals in accord with the VISTA mission. VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the

project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

Part II—Criteria for Selection of VISTA Sponsors and Projects

A. The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new and continuation VISTA projects. All of the stated elements below must be found in the applicant's proposal. The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 *et seq.*) applicable to VISTA and all applicable published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support.

6. Provide for frequent and effective supervision of the volunteers.

7. Identify resources needed and make them available for volunteers to perform their tasks.

8. Have the management and technical capability to implement the project successfully.

B. *Additional Factors.* ACTION staff will use the following additional tests in choosing among applicants who meet all of the criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. *Sponsoring Organization.* (a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. *VISTA Volunteers.* (a) Is the number of volunteers being requested appropriate for project goals and objectives as stated? Is a proposal requesting one VISTA Volunteer of such worth as to make development worthwhile?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

C. *Prohibited Activities.* Applicant and current sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

2. VISTA sponsors are prohibited by law from:

(a) Carrying out projects resulting in the identification of such projects with partisan and nonpartisan political activities, including voter registration activities and providing voters with transportation to the polls.

(b) Assigning volunteers to activities which would result in the displacement of employed workers or impair existing contracts for service.

(c) Requesting or receiving any compensation for the services of volunteers.

3. VISTA Volunteers are prohibited from engaging in any religious activities as part of their duties. VISTA sponsors

are prohibited from conducting any religious instruction, worship, proselytization or other religious activity as part of a VISTA project.

Part III—VISTA Project Approval Process

A. *Project Approval Process for New Sponsors.* In order to assure all potential sponsors equal consideration, the VISTA project approval process for new projects described below is to be followed.

1. When a potential sponsor contacts an ACTION State Office to apply for VISTA resources the State Office will send the sponsor a Preliminary Inquiry Form or a VISTA Project Application Form. State Offices will provide applicants with technical assistance and additional instructions necessary to plan proposed project activities.

(2) Completed VISTA Project Application forms will be reviewed by the State Director as they are received.

(a) Potential projects which the State Director determines to be out of compliance with VISTA legislation and guidelines will be disapproved and the applicant agency/organization notified in writing.

(b) Potential projects that meet minimum VISTA requirements will be assessed by the State Director in terms of the Additional Factors noted in Section IIB above, evidence of local support, the overall quality of the project application, the State programming strategy (e.g. rural/urban program focus, etc.), and the availability of VISTA resources within the State.

3. At least 60 days prior to the planned projects' start dates, the State Director will forward to the ACTION Regional Office all VISTA project applications recommended for placement of VISTA Volunteers.

4. The Regional Director will review the State Director's recommendations and transmit to the Director of VISTA, at least 60 days prior to the planned projects' start dates, all project application packages deemed suitable for VISTA Volunteer placements along with recommendation memos from the State and Regional Offices.

Project applications not transmitted to the VISTA Director by the Regional Director will be returned to the State Director who will, in turn, notify the applicant organization(s) of the projects' non-selection.

5. The Director of VISTA will notify the Regional and State Directors of final decisions on new VISTA project applications within 60 days. Formal action necessary to implement the decisions will be taken by the State

Director after all approved VISTA Project Application forms and necessary auxiliary documents (e.g., Memorandum of Agreement, Memoranda of Understanding) have been reviewed for compliance by the Regional Director.

6. The Regional Office will forward a copy of the complete project document file to VISTA Headquarters. Original project document files will be retained in the Regional Office.

B. Project Approval Process for Existing VISTA Sponsors. All VISTA projects will be reviewed at the time of their renewal request to determine the extent to which the projects are mobilizing support from the community and planning for community continuance of the volunteers' activities.

1. The project approval process outlined below is to be followed for all existing VISTA projects seeking renewal for a second or third year of operation.

a. Project applications from existing sponsoring organizations which desire continuation of their present VISTA projects, i.e. continuation of the VISTA volunteer activities and/or program issue area(s) previously approved, for a second or third year of operation should be submitted to the ACTION State Office at least 115 days prior to the end of the current project period.

b. The State Director will review the continuation project application, as well as quarterly VISTA Project Progress Reports which have been submitted during the prior project period. The State Director will transmit the complete project renewal package to the Regional Director, along with a recommendation for continuance or non-continuance of the VISTA project, at least 80 days prior to the end of the current project period.

c. If the Regional Director approves the renewal project application, the project will be continued for one year subject to the availability of funds. Formal action necessary to implement the approval decision will be taken by the State Director after all approved VISTA project application forms and auxiliary documents (e.g. Memorandum of Agreement, Memoranda of Understanding) have been reviewed for compliance by the Regional Director.

d. The Regional Office will forward a copy of the complete project document file to VISTA Headquarters. Original project document files will be retained in the Regional Office.

e. If the Regional Director disapproves the renewal project application, the sponsoring organization will be notified by the Regional Director at least 75 days in advance of the end of the current project period that ACTION intends to deny the application for renewal, and the sponsor will be given an opportunity

to show cause why the application should not be denied in accordance with section 412 of the Domestic Volunteer Service Act of 1973, as amended (enacted May 21, 1984), and 45 CFR, Part 1206, Subpart B, (effective March 25, 1982).

f. If the current sponsor participates in an informal meeting, the information presented by the sponsor at that meeting, as well as a report of the meeting and recommendations of the Regional Director, will be forwarded within five (5) working days of the meeting to the Director of VISTA for a final decision on the project's renewal application. The project will be continued at its existing level of volunteer and project support pending a final decision by the Director of VISTA.

g. Where a final decision denies project renewal, VISTA volunteers whose terms of service extend beyond the project's expiration date are covered by the provisions of 45 CFR Part 1210.3-2.

2. The project approval process outlined below is to be followed for:

a. all existing VISTA projects seeking continuation for a fourth year or longer of the previously approved VISTA volunteer activities and/or program issue area(s);

or

b. all existing VISTA projects approved for less than 15 volunteers seeking an increase of 40% or more in their previously approved level of VISTA Volunteer positions, and all existing VISTA projects approved for 15 or more volunteers seeking an increase of 30% or more in their previously approved level of volunteers;

c. all existing VISTA sponsors seeking to change the programmatic emphasis(es) of the VISTA project and/or substantially change the scope of the activities and duties performed by the volunteers (e.g. from literacy to job development, or from agricultural production activities to development of food buying clubs).

(1) Project application should be submitted to the ACTION State Office at least 115 days prior to the beginning of the proposed project period. The State Director will review the project application, as well as quarterly VISTA Project Progress Reports for the prior project period and evidence of local support for the proposed project's activities.

(2) At least 80 days prior to the beginning of the project period, the State Director will transmit the complete project package to the Regional Director, along with a specific justification for the

continuance of the current project beyond a third year, or a recommendation regarding the sponsor's revised programmatic emphasis or volunteer activities.

(3) The Regional Director will review the project package and State Director's recommendations and transmit to the Director of VISTA, at least 60 days prior to the start of the project period, any application package deemed suitable for VISTA volunteer placements along with recommendation memos from the State and Regional Offices. The Director of VISTA will render the final decision on the project application package within 60 days. The ACTION State and Regional offices will take formal action to implement the VISTA Director's decision.

(4) If the project application requesting continuation of a current VISTA project for a fourth year or longer, as defined in (B)(1) above, is disapproved at the State, regional or national level, the sponsoring organization will be notified at least 75 days in advance of the end of the current project period that ACTION intends to deny the application for renewal, and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with section 412 of the Domestic Volunteer Service Act of 1973, as amended, (enacted May 21, 1984), and 45 CFR, Part 1206, Subpart B, (effective March 25, 1982).

(5) If the sponsor participates in an informal meeting, the information presented by the sponsor at that meeting, as well as a report of the meeting and recommendations of the Regional Director will be forwarded within five (5) working days of the meeting to the Director of VISTA for a final decision on the project's renewal application. The project will be continued at its existing level of volunteer and project support pending a final decision by the Director of VISTA.

(6) Project applications from current VISTA sponsors seeking volunteers for new projects, [i.e. sponsors proposing to change the programmatic emphasis(es) or substantially change the scope of activities and duties performed by the volunteers from those previously approved] are not subject to the denial of refunding procedures contained in section 412 of the Domestic Volunteer Service Act of 1973, as amended (enacted May 21, 1984), and 45 CFR, Part 1206, Subpart B (effective March 25, 1982).

C. Extensions of Current VISTA Projects. In limited circumstances, current VISTA sponsors may wish to

extend previously approved projects for up to six months in order to allow already-assigned VISTA volunteers to complete their term of service, and/or to conclude activities designed to institutionalize the efforts of VISTA Volunteers when ACTION/VISTA no longer provides Volunteers.

In such instances, the VISTA sponsors will send to the ACTION State Office, at least 60 days prior to the end of the current project period, a detailed justification, along with Section III of the VISTA Project Application form, describing the activities to be performed during the extension period.

The State Director will review the project extension request and transmit it, along with a recommendation memo, to the ACTION Regional Director at least 45 days prior to the end of the current project period.

The ACTION Regional Director will render a final decision on the project extension request within 20 days.

If the request is approved, the ACTION State and Regional Offices will take formal action to implement the decision including extension of the current Memorandum of Agreement.

The Regional Office will forward copies of all project extension documents to VISTA Headquarters. Original project document files will be retained in the Regional Office.

Denial of project extension requests of six months or less are not subject to the denial of refunding procedures contained in section 412 of the Domestic Volunteer Service Act of 1973 as amended (enacted May 21, 1984), and 45 CFR, Part 1206, Subpart B (effective March 25, 1982).

D. Intergovernmental Review of VISTA Projects. Agencies and organizations submitting new or renewal VISTA project applications must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. ACTION State Offices will provide applicant organizations with technical assistance regarding this requirement.

E. Governor's Approval of VISTA Projects. Governor's approval must be sought by the ACTION Regional Director (or designee) for all new VISTA projects, as well as for ongoing projects which are requesting an increase in their volunteer numbers or substantially changing their volunteer activities.

No volunteers may be assigned in any State until the Governor or other Chief Executive Officer of the jurisdiction concerned has been given 45 days

within which to disapprove the proposed project's submission.

F. Freedom of Information Act Requests Related to VISTA Project Reviews. All Freedom of Information Act (FOIA) requests generated by the project review process shall be directed to the FOIA Officer in ACTION Headquarters for reply (even if initially addressed to the State or Regional Office).

(42 U.S.C. 4951, 4952, and 4953)

Dated in Washington, D.C. on April 18, 1985.

Betty H. Brake,

Acting Director, ACTION.

[FR Doc. 85-9755 Filed 4-22-85; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 85-007N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists memoranda issued by the Standards and Labeling Division (SLD), Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service (FSIS), and available to the public which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy in the labeling area.

FOR FURTHER INFORMATION CONTACT: Margaret O.K. Glavin, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132, and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts with SLD. A variety of factors, such as

continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists those SLD policy memoranda issued from October 1, 1984, through April 1, 1985.

Persons interested in obtaining copies of any of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
077	Labeling and Standards Requirements for Quiche Products, October 11, 1984.	What are the appropriate labeling and standards requirements for quiche products?	N/A.
078	Potassium Labeling Guidelines, November 15, 1984.	What guidelines should be followed in the review and approval of labeling which includes potassium information?	N/A.
079	Cooked Corned Beef Products with Added Substances, February 25, 1985.	Can cooked corned (cured) beef products in excess of the fresh uncured weight be prepared and how should they be labeled?	9 CFR 319.100, 319.101, 319.102, Policy Memo 057.

The SLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on April 18, 1985.

Margaret O.K. Glavin,

Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service.

[FR Doc. 85-9740 Filed 4-22-85; 8:45 am]

BILLING CODE 3410-0M-M

Forest Service**Mono Basin National Forest Scenic Area Advisory Board; Meeting**

The Mono Basin National Forest Scenic Area Advisory Board will meet at 10:00 a.m. on May 22, 1985, at the Lee Vining Presbyterian Church, Lee Vining, California. The agenda of the meeting follows:

1. Policy of private land and minor boundary revisions;
2. Procedure for public input;
3. Review of visitor center sites;
4. Management Plan;
5. Sheep grazing (relicted lands);
6. Final logo.

The meeting will be open to the public. Persons who wish to attend should notify Eugene E. Murphy, Forest Supervisor, Inyo National Forest, 873 No. Main Street, Bishop, California, 93514 Telephone: (619) 873-5841. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: None.

Dated: April 15, 1985.

Eugene E. Murphy,

Forest Supervisor and Chairman.

[FR Doc. 85-9769 Filed 4-22-85; 8:45 am]

BILLING CODE 3410-11-M

Colville National Forest, Grazing Advisory Board; Meeting

The Colville National Forest Grazing Advisory Board will meet at 1 p.m. on May 21, 1985 at the Federal Building conference room, 895 South Main, Colville, Washington. The purpose of this meeting is to discuss range allotment management planning, and range betterment projects.

The meeting is open to the public. Persons who wish to attend should notify Gary Oliverson, Colville National Forest, 895 South Main, Colville, WA 99114. Written statements may be filed with the committee before or after the meeting.

Dated: April 12, 1985.

William D. Shenk,

Forest Supervisor.

[FR Doc. 85-9756 Filed 4-22-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[Order No. 302]

Approval for Expansion of Foreign-Trade Zone No. 81 at Sites in Portsmouth, Dover, and Manchester, NH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the New Hampshire State Port Authority (the Port Authority), Grantee of Foreign-Trade Zone No. 81, has applied to the Board for authority to expand its general-purpose zone to include industrial park sites in Portsmouth, Dover, and Manchester, New Hampshire, adjacent to the Portsmouth and Lawrence Customs ports of entry;

Whereas, the application was accepted for filing on September 5, 1984, and notice inviting public comment was given in the Federal Register on September 21, 1984 (Docket No. 41-84, 49 FR 37131);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Portsmouth area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed September 5, 1984. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 12th day of April 1985.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-9742 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-05-M

International Trade Administration

[A-485-006]

Postponement of Final Antidumping Duty Determination and Postponement of Hearing; Carbon Steel Plate From Romania

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This informs the public that: (1) We are granting a request we received from the respondent in this investigation to postpone the final determination until not later than July 25, 1985, as permitted in section 635(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)), and (2) we have determined to postpone our hearing until May 30, 1985, and our final determination as to whether sales of hot-rolled carbon steel plate from Romania have occurred at less than fair value until not later than July 25, 1985.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 377-2830.

SUPPLEMENTARY INFORMATION: On March 12, 1985, we published a notice in the Federal Register (50 FR 9812) that the suspension agreement covering imports of hot-rolled carbon steel plate from Romania is no longer in the public interest and, therefore, no longer meets the requirements of section 734(d)(1)(A) of the Act. As provided in section 734(i)(1) of the Act, we resumed the antidumping preliminary determination under section 733(b) of the Act were made on March 12, 1985, the date of publication of our notice of termination of the suspension agreement.

March 21, 1985, we notified interested parties that we would make our final determination on or before May 28, 1985. Pursuant to section 735(a)(2) of the Act, the respondent requested an extension of the final determination date until the 135th day after the date on which we published our notice of resumption of this investigation. The respondent is qualified to make such a request because it accounts for a significant proportion of the exports of the merchandise. If an exporter who accounts for a significant proportion of exports of the merchandise under investigation properly requests an extension after an affirmative preliminary determination, we grant the request, absent compelling reasons to the contrary. We will issue a final determination in this case not later than July 25, 1985.

The hearing originally scheduled for April 30, 1985, has been postponed. The new hearing date will be May 30, 1985, at 10 a.m. in room 1851, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Interested parties who wish to participate must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099b, at the above address within 10 days of publication of this notice. Oral presentations will be limited to issues raised in the briefs.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 23, 1985. A date will be established at the hearing for the submission of post-hearing briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address and in at least 10 copies, not later than June 25, 1985.

This notice is published pursuant to section 735(b) of the Act.

Dated: April 16, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-9696 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-09-M

[C-614-503]

Lamb Meat From New Zealand; Initiation of Countervailing Duty Investigation

AGENCY: Import Administration,
International Trade Administration,
Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, processors, or exporters in New Zealand of lamb meat receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination by June 19, 1985.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT:

Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-0187 or 377-1785.

SUPPLEMENTARY INFORMATION:

The Petition

On March 26, 1985, we received a petition in proper form from counsel for the American Lamb Company of Chino, California and its constituent members; the Denver Lamb Company of Denver, Colorado and its constituent members; and the Iowa Lamb Corporation of Hawarden, Iowa, filed on behalf of the United States industry which is comprised of sheep ranchers, feed lot operators, and lamb meat packing and processing companies.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, processors, or exporters in New Zealand of lamb meat receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Effective April 1, 1985, the Office of the United States Trade Representative terminated New Zealand as a "country under the Agreement" pursuant to section 701(b)(2) of the Act. Since New Zealand is no longer a "country under the Agreement" and the merchandise being investigated is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of this merchandise cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition

sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on lamb meat from New Zealand, and we have found that it meets these requirements. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether producers, processors, or exporters in New Zealand of lamb meat receive, directly or indirectly, bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before June 19, 1985.

Scope of Investigation

The merchandise covered by this investigation is lamb meat, currently classified under item number 106.30 of the *Tariff Schedules of the United States*.

Allegations of Bounties or Grants

The petition alleges that producers, processors, or exporters in New Zealand of lamb meat receive the following benefits that constitute bounties or grants:

1. Meat Board Price Support Scheme
2. Government Supplementary Minimum Price Scheme (SMP)
3. Meat Board Support Programs for Exports
 - a. Promotional Activity by the Board's New York Office
 - b. Contributions to the Meat Industry Research Institute
 - c. Payments for the Cost of Supervision of Meat Grading for Export
4. Meat Board Loans and Loan Guarantees
5. Meat Industry Hygiene Grant
6. Export Performance Tax Incentive Scheme (EPTI)
7. Export Market Development Taxation Incentive
8. Export Program Grants Scheme (EPGS)
9. Export Suspensory Loan Scheme (ESLS)
10. Rural Export Suspensory Loans
11. Suspension of Government Inspection Fees
12. Livestock Incentive Scheme
13. Land Development Loans
14. Standard Value and Nil Value

We note that the EPGS and ESLS programs were scheduled to expire on March 31, 1985. However, they may have provided benefits during the period of investigation and may provide benefits lasting beyond the expiration date.

We will also initiate a countervailing duty investigation on the following programs in order to examine whether these programs are limited to specific enterprises or industries or whether they are available on equal terms to all industries in the agriculture sector, including the livestock industry.

1. Fertilizer Price Subsidy

Petitioners allege that the New Zealand lamb meat industry receives benefits from a New Zealand government program which provides a price subsidy of NZ\$15 per ton on all fertilizer used by new Zealand farmers.

2. Fertilizer and Lime Bounty

Petitioners allege that the New Zealand lamb meat industry receives benefits under a New Zealand government program providing a subsidy to encourage the application of fertilizer and lime.

3. Fertilizer and Liné Transport Subsidy

Petitioners allege that the New Zealand lamb meat industry receives benefits from a New Zealand government program under which the New Zealand government has been paying a subsidy on the transport of fertilizer.

4. Noxious Plant Control

Petitioners allege that the New Zealand government provides benefits under the noxious plant control scheme to assist New Zealand livestock.

5. Deductions for Capital Expenditures for Development of Domestic Farmland

Petitioners allege that, in order to encourage farmers to bring land into production and to increase the productivity of existing farms, the New Zealand government provides special beneficial tax deduction provisions for certain items of development expenditure which normally would not be deductible.

We will also investigate any other program found or uncovered during the course of this investigation that may confer a bounty or grant upon the production or exportation of New Zealand lamb meat.

We are not initiating on the following program:

Contributions to the Lamb Promotion Coordinating Committee (LPCC)

Petitioners allege that the Meat Board contribution to the LPCC to support the consumption of lamb meat in the United States. The LPCC is comprised of representatives of the U.S. and New Zealand lamb industry, and its purpose is to promote the consumption of lamb

meat in the U.S. without regard to the source of the lamb meat. Since there is no allegation that the program targets New Zealand lamb meat, the generic promotion does not constitute a subsidy to producers, processors, or exporters of lamb meat within the meaning of the countervailing duty law.

Dated: April 15, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-9697 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-501]

Initiation of a Countervailing Duty Investigation; Portable Aluminum Ladders and Certain Components of Ladders From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of portable aluminum ladders and certain components of ladders, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before June 19, 1985.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Bradley Mikkelsen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1248 or 377-1769.

SUPPLEMENTARY INFORMATION

Petition

On March 26, 1985, we received a petition from R.D. Werner Co., Inc. of Greenville, Pennsylvania filed on behalf of the U.S. industry producing portable aluminum ladders. On April 9 and 11, 1985, petitioners submitted supplementary information. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of portable aluminum ladders and certain components of ladders

receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and this merchandise is duty-free, sections 303(a)(1) and (a)(2) of the Act apply to this investigation. The merchandise subject to this investigation enters the United States duty-free under the Generalized System of Preferences (GSP). Because there are no "international obligations" within the meaning of section 303(a)(2) of the Act, which require an injury determination for nondutiable merchandise from Mexico, petitioner is not required to allege that, and the U.S. International Trade Commission (ITC) is not required to determine whether, imports of the subject merchandise from Mexico materially injure or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on portable aluminum ladders and their components from Mexico, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Mexico of portable aluminum ladders and their components as described in the "Scope of Investigation" section of this notice, receive bounties or grants. We will make our preliminary determination by June 19, 1985.

Scope of the Investigation

The products covered by this investigation are portable aluminum ladders and their components. The term ladder includes:

- Step Ladders
- Extension Ladders
- Step Stools
- Platform Ladders
- Single Ladders
- Combination Ladders
- Trestle Ladders
- Extension Trestle Ladders

Aluminum ladders are currently classified under item number 657.4015 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Other articles of aluminum not coated with precious metal are classified under

TSUSA number 657.4080 and include ladder components. Components of ladders and step stools include: steps, side rails, braces, pail shelves, spreaders, D-rungs, and rung-locks. The scope of this investigation only includes such components when made of aluminum or aluminum alloys. Aluminum steps stools and components of aluminum step stools are currently classified as other furniture and parts thereof not specifically provided for under TSUSA number 727.70.

Allegation of Bounties and Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of portable aluminum ladders and their components receive benefits under the following programs which constitute bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)
- Fund for Industrial Development (FONEI)
- Preferential Federal Tax Credits (CEPROFI)
- Accelerated Depreciation of Capital Equipment and Machinery
- Guarantee and Development Fund for Medium and Small Businesses (FOGAIN)
- Trust Fund for Industrial Parks, Cities and Commercial Centers (FIDEIN)
- Import Duty Reductions and Exemptions
- Preferential State Investment Incentives
- Article 94 Loans
- Trust Fund for Small and Medium-Sized Companies (FOMIN)
- Government Financed Technology Development
- Regional Energy Discounts
- BANCOMEXT Loans
- PROFIDE
- Preferential Freight, Terminal and Insurance Benefits
- Delay of Payments of Fuel Charges

Programs Not Initiated

Preferential Vessel Rates

The petition alleges that manufacturers, producers or exporters of aluminum ladders from Mexico receive preferential vessel rates. Department of commerce import statistics reveal that aluminum ladders were not imported by water transport.

NAFINSA Loans

The petitioner alleges that producers of portable aluminum ladders have received NAFINSA loans which are provided at below market interest rates for companies located in priority development areas. In *Oil Country*

Tubular Goods from Mexico (49 FR 47054, Nov. 30, 1984), we determined that loans granted by the commercial banking operations of NAFINSA are not limited to a specific industry, group of industries, or to companies located in specific regions and therefore, do not confer a bounty or grant. Because the petition presents no new evidence of changed circumstances with respect to this program, we will not investigate this allegation.

Stock Purchases by FOMIN

The petitioner alleges that FOMIN may have purchased stock in Mexican ladder producers. Because the petitioner does not allege that such stock purchases were made on terms inconsistent with commercial considerations, we will not investigate on this program.

Mexican Institute of Foreign Trade (IMCE)

Petitioner alleges that IMCE assists Mexican exporters with trade fairs, missions and technical assistance to exporters and that Mexican portable aluminum ladder producers may have received such assistance. With respect to the functions performed by IMCE that include organizing and directing trade fairs abroad, promoting the visits of foreign trade missions, carrying out investigations to identify national products or services that might be in demand abroad, and providing exporters with technical assistance, we have previously determined that this program does not confer a bounty or grant. (See *Fresh Cut Flowers from Mexico*, 49 FR 15007, April 16, 1984)

Because the petition does not contain an allegation that IMCE provides benefits other than those that have already been determined not to be countervailing, nor does it provide any new evidence of changed circumstances, we will not investigate on this program.

Dated: April 15, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-9698 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-05-M

[C-588-040]

Certain Fasteners From Japan; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On January 10, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain fasteners from Japan. The review covers the period January 1, 1983, through December 31, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Al Jemott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1985, the Department of Commerce ("the Department") published in the *Federal Register* (50 FR 1255) the preliminary results of its administrative review of the countervailing duty order on certain fasteners from Japan (42 FR 23147, May 6, 1977; amended by 44 FR 31972, June 4, 1979). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of all Japanese fasteners currently classifiable under items 646.5400 and 646.5600, and non-metric Japanese fasteners currently classifiable under items 646.1700, 646.4000, 646.4100, 646.4920, 646.4940, 646.5100, 646.5300, 646.5800, 646.6020, 646.6040, 646.6320, 646.6340, 646.6500, 646.7200, 646.7400, 646.7500, 646.7600, and 646.7800 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983, through December 31, 1983, and three programs: (1) Benefits received under the "Temporary Measures Act for Small and Midsized Businesses with Regard to the High Yen Exchange Market"; (2) the deferral of income taxes on export earnings under the Overseas Market Development Reserves; and (3) other loans given at preferential rates by the People's Finance Corporation, the Bank of Commerce and Industrial Cooperatives, the Small Business

Finance Corporation, and the Japan Development Bank.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the aggregate net subsidy to be 0.05 percent *ad valorem* for the period January 1, 1983, through December 31, 1983. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*. Therefore, the Department will instruct the Customs Service not to assess countervailing duties on any shipments exported on or after January 1, 1983, and on or before December 31, 1983.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, on any shipment of Japanese fasteners entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 17, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-9735 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-696,222

Improved Method and Apparatus for the Mass Rearing of Fruit Flies

SN 6-696,274

Electronic Temperature Equalizer

SN 6-704,442

Novel Diolfin Pheromone Mimics as Disruptants of Sexual Communication in Insects

Department of Commerce

SN 6-680,114

Method and Apparatus for Four-Beam Radar

SN 6-716,913

Polyunsaturated Fatty Acids from Fish Oils

Department of Health and Human Services

SN 6-696,538

Monoclonal Antibodies Against Chlamydial Genus Specific lipopolysaccharide

SN 6-709,678

Purified Antigen from Non-A, Non-B Hepatitis Causing Factor

Department of the Army

SN 6-700,573

Cylindrical Crystal Resonator

[FR Doc. 85-9758 Filed 4-22-85; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Feeder Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal to replace the current procedure for delivery of the underlying physical commodity with a cash settlement mechanism for the feeder cattle futures contract. The Commodity Futures Trading

Commission ("Commission") has determined that the proposed cash settlement mechanism is of major economic significance and that, accordingly, publication of that proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before May 23, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME feeder cattle contract.

SUPPLEMENTARY INFORMATION: The Chicago Mercantile Exchange is proposing to amend its feeder cattle futures contract. The CME has proposed to replace the current physical delivery procedure for feeder cattle delivery with a cash settlement mechanism. The Exchange believes that a cash settlement feeder cattle contract would eliminate: The uncertainties and disputes associated with the grading of CME feeder deliveries; the risk of longs receiving delivery at an inconvenient location or receiving undesired types of feeder cattle; the costs incurred in making or taking delivery on the contract; and the need for certain periodic contract amendments including discounts for non-par grades, grade deviations, and additions and deletions of delivery points; and would reduce the basis variability for users of the contract.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CME concerning cash settlement procedures for its feeder cattle futures contract is of major economic significance because of the potential effect on the hedging utility and pricing of the contract. Accordingly, the principal amendments being proposed by the CME are printed below, using bracketing to indicate deletions and italics to indicate additions:

2301. COMMODITY

SPECIFICATIONS.—Each futures contract shall be [for feeder steers of Medium Frame and the lower two thirds (2/3) of the Large Frame size and Number One (1) muscle thickness and the top one-third (1/3) of the Number Two (2) muscle thickness, as defined in Official United States Standards for Grades

of Feeder Cattle in effect as of the opening of the contract.] *valued at 44,000 pounds times the Cattle Fax US Feeder Steer Price per pound for 600 to 800 pound steers.*

2302. FUTURES CALL.—

A. Trading Months and House

Futures contracts shall be scheduled for trading during such hours and [delivery] for final settlement in such months as may be determined by the Board of Governors, subject to the requirement that all such determinations be submitted to the Commodity Futures Trading Commission in accordance with the provisions of section 5a(12) of the Commodity Exchange Act and all applicable regulations thereunder.

B. Trading Unit

The unit of trading shall be 44,000 pounds of 600 to 800 pound feeder steers. [consisting of the USDA Number One (1) muscle thickness and not more than thirteen (13) head of the top one-third (1/3) of the USDA Number Two (2) muscle thickness.]

E. Position Limits

A person shall not own or control more than [300] 2400 contracts net long or net short in [any delivery] all contract months [.] combined, nor more than 600 contracts in any contract month, except that in no event shall a person own or control more than 300 contracts in the spot month during the last 10 days of trading.

F. Accumulation of Positions

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, [acting in concert or] and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding, and the positions of all accounts in which [such] a person or persons have a proprietary or beneficial interest, shall be cumulated.

G. Bona Fide Hedges

The foregoing position limits shall not apply to bona fide hedging transactions meeting the requirements of [section 4a(3) of the] Regulation 1.3(z) (1) of the Commodity [Exchange Act] Future Trading Commission and the Rules of the Exchange.

H. Termination of Trading

Trading shall terminate on the [20th calendar day] last Friday of the contract month. [or, if the 20th calendar

day is not a business day, on the business day immediately preceding the 20th calendar day of the contract month. In the event that following the 20th calendar day of the contract month there remain, pursuant to Rule 2303.A., two or less delivery days in the contract month, trading shall terminate two business days preceding the 20th calendar day.] *unless a holiday falls on that Friday or on any of the five weekdays prior to that Friday, in which case trading shall terminate on the first prior Friday that is not a holiday and is not so preceded by a holiday.*

2303. [DELIVERY PROCEDURES. In addition to the procedures and requirements of Chapter 7, the following shall specifically apply to the delivery of Feeder Cattle.] **FINAL SETTLEMENT.**—*Final settlement of this contract shall be by cash settlement. There shall be no delivery of feeder cattle on this contract.*

A. [Delivery Days]

Final Settlement Price

[Delivery may be made on any Monday, Tuesday, Wednesday, or Thursday of the contract month, except that deliveries may not be made on a holiday or the day preceding a holiday.] *The final settlement price shall be the weekly average Cattle Fax US Feeder Steer Price for 600 to 800 pound steers for the week in which trading terminates.*

B. [Seller's Duties] Final Settlement

[A seller intending to make delivery shall present to the Clearing House a written Notice of Intent to Deliver on a form prescribed by the Exchange. For deliveries at all points shown in 2304.E., such notice must be delivered to the Clearing House no later than 1:00 p.m., one day prior to actual delivery. The buyer shall be notified by the Exchange not later than 3:00 p.m. of said day unless such notification deadline is extended by the President. On the day of delivery, the seller shall promptly furnish the buyer such documents as required by the Exchange.] *Clearing members holding open positions in a Feeder Cattle futures contract at the time of termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation margin procedures based on a settlement price equal to the final settlement price.*

The proposed amendments to the feeder cattle futures contract would

become effective immediately after Commission approval for all contract months subsequently listed by the Exchange for trading, but would not be applicable to currently listed months.

FOR FURTHER INFORMATION CONTACT:

Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254-7303.

Other materials submitted by the CME in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by May 23, 1985.

Issued in Washington, D.C., on April 18, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-9728 Filed 4-22-85; 8:45 am]

BILLING CODE 6351-01-M

MidAmerica Commodity Exchange; Proposed Amendments Relating to the Copper Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The MidAmerica Commodity Exchange has submitted a proposal to amend its copper futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before May 23, 1985.

ADDRESS: Interested persons should submit their views and comments to

Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the MCE copper futures contract rule amendments.

SUPPLEMENTARY INFORMATION: Under the existing rules of the MidAmerica Commodity Exchange ("MCE" or "Exchange") copper futures contract, the par deliverable grade is Grade 2 electrolytic copper cathode meeting the ASTM B115-82 specifications. Delivery of Grade 1 electrolytic copper cathode is not permitted under current rules. Currently, alternative deliverable grades and forms are (1) fire refined high conductivity (FRHC) copper ingots or ingot bars (ASTM B23-80) delivered at par; (2) electrolytic copper wire bars (ASTM B5-82) delivered at a premium of 1/4 cent per pound; (3) electrolytic copper ingots and ingot bars (ASTM B5-82) delivered at a premium of 1/4 cent per pound; and (4) fire refined copper (other than lake copper or FRHC) assaying 99.88 percent copper plus silver in ingot or ingot bar form (ASTM B216-82) delivered at a discount of 1/4 cent per pound.

The Exchange is proposing to allow Grade 1 electrolytic copper cathode (ASTM B115-82) to be delivered on the contract at a premium of 1/2 cent per pound, delete the 1/4 cent per pound premium for the delivery of electrolytic copper wire bars (ASTM B5-82), remove from deliverable status all types of copper ingots and require that deliverable electrolytic copper cathodes be identified by grade in the warehouse receipt. If the Commission approves these proposed amendments, the par deliverable grade on the MCE copper futures contract would continue to be Grade 2 electrolytic cathodes (ASTM B115-82), and all currently deliverable copper ingot bars would also continue to be deliverable on the contract at the price differentials currently specified.

The Exchange is proposing that the amendments of the copper futures contract be applicable to existing contracts beginning with the December 1985 contract as well as to all new contracts listed by the Exchange subsequent to Commission approval.

FOR FURTHER INFORMATION CONTACT: Richard Shiltz, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-7303.

In accordance with section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposed rule amendments submitted by the MCE concerning its copper futures

contract are of major economic significance. Accordingly, the MCE's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by MCE in support of its proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)). Requests for copies of such materials should be made to FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any persons interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581, by May 23, 1985.

Issued in Washington, D.C. on April 18, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-9729 Filed 4-22-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Annual Inventory Report

AGENCY: Defense.

ACTION: Notice of availability.

SUMMARY: This notice announces the publication of the "DoD Commercial Activities Inventory Report and Five-Year Review Schedule" for Fiscal Year 1984. This document may be obtained by writing to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, referring to stock number 008-000-00425-1, and enclosing a check in the amount of \$14.00, payable to the Superintendent of Documents.

SUPPLEMENTARY INFORMATION: This document is published under the provision of OMB Circular A-76, which requires the Department of Defense to publish an annual inventory report of all commercial activities, both in-house and contract support services. The OMB also requires that the Department of Defense publish a five-year schedule for reviewing all in-house and contract

commercial activities. The purpose of the review is to determine whether the current method of operation should continue or whether an in-house versus contract cost comparison should be performed to determine the most cost effective method of operation.

Linda M. Lawson,

Alternate OSD Federal Register Officer,
Department of Defense.

April 17, 1985.

[FR Doc. 85-9668 Filed 4-22-85; 8:45 am]

BILLING CODE 3810-01-M

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense, Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2066(e) et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to (1) attend the DoD Education benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696-5793 by May 20, 1985. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 23, 1985, 9:00 a.m. to 4:00 p.m.

ADDRESS: Room 1E801, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209 (202) 696-5869.

Linda M. Lawson,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

April 17, 1985

[FR Doc. 85-9670 Filed 4-22-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Armament Division Advisory Group will meet at Eglin AFB, Florida, on May 9 and 10, 1985, from 8:00 AM to 5:00 PM in Building 1, Room 204 to review Air Force weapon development programs.

This meeting will involve classified defense matters listed in Section 552b(c)

of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-9759 Filed 4-22-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 9 May 1985 at the Hyatt Regency-Crystal City Hotel, Crystal City, Arlington, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DoD 4500.34-R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 765-1600, between 0700-1530 hours. Topics to be discussed should be received on or before 25 April 1985.

Dated: April 12, 1985.

Joseph R. Marotta,

Colonel GS, Director of Personal Property.

[FR Doc. 85-9744 Filed 4-22-85; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Directorate of Personal Property; Rate Filing Procedures; Domestic Interstate Shipments

AGENCY: Military Traffic Management Command.

ACTION: Submission by the Industry of rate filings for domestic interstate personal property shipments for the May 1, 1985 cycle.

SUMMARY: The purpose of this notice is to provide advance notification to the household goods moving industry for

submitting domestic interstate rates and to announce rate filing procedures for transporting Department of Defense and U.S. Coast Guard personal property shipments for the May 1, 1986 cycle.

The Military Traffic Management Command Rate Solicitation 4-2, and reissues thereof, will be modified by considering the entire document as a complete baseline document which requires carriers to submit only one percentage instead of two. This will mean that the single percentage quoted cover all charges (linehaul, packing, and accessorials) for all services rendered on each individual shipment. This revision will be included in the solicitation for the rate cycle commencing May 1, 1986. Carriers will still be allowed to submit a single percentage below, equal to, or above the Military Traffic Management Command developed baselines.

DATE: Written comments concerning this solicitation will be considered if received not later than July 1, 1985.

ADDRESS: Comments to: Commander, Military Traffic Management Command, ATTN: Rate Acquisition Division (MT-PPC), Room 408, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

FOR FURTHER INFORMATION, CONTACT: Mr. Jeffrey McKenzie, HQ, Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050, (202) 756-1190.

SUPPLEMENTARY INFORMATION: This change will promote the overall efficiency of services provided to the Government by reducing the administrative burden associated with the submission and quotation of rates. It should also provide greater flexibility to carriers and forwarders in negotiating a competitive rate which reflects all of their actual costs. To accommodate this revised rate filing procedure, details of the parallel revision of the CONUS Automated Rate System will be provided by May 1, 1985. If industry desires, a meeting will be scheduled to answer any questions concerning the revised procedures for filing rates. The solicitation for the May 1, 1986, cycle will be provided in October 1985.

This request for comments and the resulting determinations are being made under the authority of 10 U.S.C. 2301-2314 and DOD Directive 4500.9 and 4500.34R.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1985.

[FR Doc. 85-9754 Filed 4-22-85; 8:45 am]

BILLING CODE 3810-01-M

Army Science Board; Meeting Change

The following joint meeting of the Army Science Board Functional Subgroup on Human Capabilities and Resources and the Ad Hoc Subgroup on Soldier Research Issues which was originally announced in the Federal Register issue of Tuesday, 16, April 1985, (50 FR 14961) FR Doc #85-9067, has been changed as follows:

Entire meeting is open to the general public (portions were previously announced as closed). Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-9798 Filed 4-19-85; 2:29 pm]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday, 8 May 1985.

Times of Meeting: 0830-1700 hours (Closed).

Place: John Hopkins University Applied Physics Laboratory, Laurel, Maryland.

Agenda: A tri-lab overview meeting will be held of 3 U.S. Army laboratories (Atmospheric Sciences Lab, Electronic Warfare Lab, and Signals Warfare Lab) effectiveness reviews being conducted by the Army Science Board for classified discussions on lessons learned during the course of these reviews. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-9799 Filed 4-19-85; 2:29 pm]

BILLING CODE 3710-08-M

Department of the Navy

Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy intends to conduct OMB Circular A-76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing 23 May 1985. Cost study

process is rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. Since studies not yet begun, specifications not yet prepared. When bids/proposals desired, appropriate advertisements will be placed. No consolidated bidders' list being maintained since solicitations will be processed by various contracting offices throughout U.S.

Surface Warfare Officers School
Command Detachment (Base Operations), Coronado, CA
Admin Support Services
Surface Warfare Officers School
Command Detachment, Coronado, CA
Admin Support Services
Training Development and Support (Admin)
Naval Air Maintenance Training Group
Detachment, Lemoore, CA
Training Development and Support
Naval Hospital, Long Beach, CA (Naval Hospital Branch Clinic, Seal Beach), CA
Medical Care
Naval Hospital, Long Beach, CA
Ambulance Services
Combat Systems Technical School
Command, Mare Island, CA
Storage and Warehousing
Admin Support Services
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Miramar, CA
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Moffett Field, CA
Training Development and Support
Fleet Numerical Oceanography Center, Monterey, CA
Custodial Services
Naval Air Maintenance Training Group
Detachment, North Island, CA
Training Development and Support
Naval School Physical Distribution Management, Oakland, CA
Admin Support Services
Training Development and Support
Naval Construction Training Center, Port Hueneme, CA
Storage and Warehousing
Admin Support Services
Training Development and Support
Fleet Training Center, San Diego, CA
Training Development and Support
Naval Submarine Base, San Diego, CA
Recreational Library Services
Fleet Intelligence Center, Pacific, San Diego, CA
Admin Support Services
Naval Unit, Lowry Air Force Base, CO
Admin Support Services
Armed Force Air Intelligence Training Center, Lowry AFB, CO

Training Development and Support
Naval Submarine Medical Research Laboratory, Groton, CT
Custodial Services
Naval Air Maintenance Training Group
Detachment, Cecil Field, FL
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Jacksonville, FL
Training Development and Support
Naval Medical Command, Southeast Region, Jacksonville, FL
Ambulance Services
Naval Hospital, Jacksonville, FL
Custodial Services
Fleet Training Center, Mayport, FL
Admin Support Services
Naval Air Maintenance Training Group
Detachment, Mayport, FL
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Whiting Field, Milton, FL
Training Development and Support
Naval Hospital, Orlando, FL
Ambulance Services
Management Information and Instructional Systems Activity, Pensacola, FL
Operations of ADP Equipment
Naval Hospital, Pensacola, FL
Ambulance Services
Naval Air Rework Facility, NAS, Pensacola, FL
Word Processing Center
Messenger Service
Navy Supply Corps School, Athens, GA
Training Development and Support
General Skill Training, Naval Submarine Training Center, Pacific, Pearl Harbor, HI
Training Development and Support (Equipment Maintenance)
Naval Submarine Base, Pearl Harbor, HI
Heavy Truck Operation
Other Vehicle Operations
Naval Submarine Training Center, Pacific, Pearl Harbor, HI
Training Development and Support (Admin)
Commander Submarine Force, U.S. Pacific Fleet, Pearl Harbor, HI
Printing and Reproduction
Word Processing Centers
Data Processing Services
Naval Air Maintenance Training Group
Detachment, Brunswick, ME
Training Development and Support
Naval Medical Clinic, Annapolis, MD
Ambulance Services
Naval School Explosive Ordnance Disposal, Indian Head, MD
Training Development and Support
Naval Air Test Center, Patuxent River, MD
Reference Library
Naval Air Maintenance Training Group
Detachment, Meridian, MS

Training Development and Support
Aircraft Launch Recovery Training Group, Naval Air Technical Training Center, East Lakehurst, NJ
Training Development and Support
Naval Air Technical Training Center, Lakehurst, NJ
Training Development and Support
General Skill Training, Naval Air Technical Training Center, Lakehurst, NJ
Training Development and Support
Naval Air Engineering Center, Lakehurst, NJ
RDT&E Maintenance and Support
Electrical Plants and Systems
Heating Plants and Systems
Water Plants and Systems
Sewage and Waste Plants and Systems
Air Conditioning and Refrigeration Plants
Buildings and Structures (Other Than Family Housing)
Data Processing Services
Naval Hospital, Philadelphia, PA
Ambulance Services
Naval Air Maintenance Training Group
Detachment, Willow Grove, PA
Training Development and Support
Surface Warfare Officers School
Command, Newport, RI
Admin Support Services
Training Development and Support
Naval Hospital, Beaufort, SC
Occupational Health
Fleet & Mine Warfare Training Center, Naval Base, Charleston, SC
Word Processing Centers
Reference Libraries
Messenger Service
General Skill Training, Naval Air Maintenance Training Group, Millington, TN
Admin Support Services
Training Development and Support
Naval Air Technical Training Center, Millington, TN
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Beeville, TX
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Corpus Christi, TX
Training Development and Support
Naval Air Maintenance Training Group
Detachment, Kingsville, TX
Training Development and Support
Naval Amphibious School, Little Creek, VA
Curriculum Development, Test and Evaluation
Admin Support Services
Fleet Training Center, Norfolk, VA
Training Development and Support
Fleet Anti-Submarine Warfare Training Center, Atlantic, Norfolk, VA
Buildings and Structures Maintenance

Training Development and Support
*School of Music, Naval Amphibious
 Base, Little Creek, Norfolk, VA*
 Training Development and Support
*Naval Air Maintenance Training Group
 Detachment, Norfolk, VA*
 Training Development and Support
*Naval Air Maintenance Training Group
 Detachment, Oceana, VA*
 Training Development and Support
Naval Submarine Base, Bangor, WA
 Storage and Warehousing
 Sewage and Waste Plants and
 Systems
 Water Plants and Systems
 Electrical Plants and Systems
*TRIDENT Training Facility, Bangor,
 WA*

Training Development and Support
*Naval Air Maintenance Training Group
 Detachment, Whidbey Island, WA*
 Training Development and Support

Dated: April 11, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register
 Liaison Officer.

[FR Doc. 85-9126 Filed 4-22-85; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 1, 1985, beginning at 1:30 p.m. in the Newcastle Room of the Radisson Wilmington Hotel, Wilmington, Delaware. The hearing will be a part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

*Applications for Approval of the
 Following Projects Pursuant to Article
 10.3, Article 11 and/or Section 3.8 of the
 Compact:*

1. *Kudra, Kudra and Frawley D-84-40.* A sewage treatment project to serve the Heritage Hills residential development in Upper Makefield Township, Bucks County, Pennsylvania. The treatment plant will be designed to remove 92 percent (summer) BOD₅ and TSS from an average waste flow of 0.10 million gallons per day (mgd). Treated effluent will discharge to the Delaware River in Upper Makefield Township.

2. *Commonwealth of Pennsylvania,
 Department of General Services D-84-
 41 CP.* A sewage treatment project to serve Graterford Correctional Institution in Shippack Township, Montgomery

County, Pennsylvania. The project will be designed for storage and subsequent spray irrigation of an annual average of 1.0 mgd of secondary treated effluent. Spray volume will vary from 0.76 mgd during winter months to 1.3 mgd during the summer. The spray area will consist of 25 acres of woodland and 369 acres of pasture and crop land. Feed crops will be harvested and used for the prison's farm operation.

3. *Scott Paper Company D-84-53.* Discharge of industrial waste waters from the applicant's new cogeneration process at its paper manufacturing facility in the City of Chester, Delaware County, Pennsylvania. Up to 0.725 mgd of treated coal pile runoff and 0.461 mgd of cooling tower blowdown will be discharged through separate outfalls to Zone 4 of the Delaware River. Coal pile runoff will be treated for oil, sediment removal and pH control prior to discharge.

4. *H. Hassan D-84-54.* A sewage treatment project to serve the applicant's "Orchard" subdivision in Montgomery Township, Montgomery County, Pennsylvania. The plant is designed to remove 96 percent BOD₅ (summer) and 90 percent TSS from an average waste flow of 0.15 mgd. Treated effluent will discharge to the Little Neshaminy Creek in Montgomery Township, Montgomery County, Pennsylvania.

5. *Texaco USA D-85-1.* An application for ground water withdrawal to supply the applicant's oil refining facility in West Deptford Township, Gloucester County, New Jersey. Replacement Well Nos. 4A and 6A, both located in West Deptford Township, were previously placed in service and replace Well Nos. 4 and 6, which have been sealed. Each well supplies up to 40.176 million gallons (mg)/30 days for cooling and process use. Total withdrawals from all system wells average 118.7 mg/30 days.

6. *Sybron Chemicals Inc. D-85-5.* An application for approval of a ground water withdrawal which supplies the applicant's manufacturing facility in Pemberton Township, Burlington County, New Jersey. Well Nos. 2, 4, 5, and EQ106 supply water for cooling and process use and are located in Pemberton Township. Requested withdrawal rates are 43.2 mg/30 days from Well No. 5, and 80 mg/30 days from all wells. Only Well No. 4 is pumped regularly. Well Nos. 2 and 5 are used for backup and for meeting peak demands. Well No. EQ106 is used for potable supply.

7. *Borough of Honey Brook D-85-7 CP.* A ground water withdrawal project to supply the applicant's distribution system in and around Honey Brook

Borough, Chester County, Pennsylvania. New Well No. 7 will serve as a backup supply and is to be used during repair and rehabilitation of existing Well No. 5—the major existing water supply source. Present withdrawal rates from existing Well Nos. 5 and 6 average 3.75 mg/30 days. The requested withdrawal rate from the proposed well is 3.78 mg/30 days. All wells are located in Honey Brook Township in the West Branch Brandywine Creek Watershed.

8. *Commonwealth of Pennsylvania—
 Bureau of Corrections D-85-11 CP.* A sewage treatment project to serve the new Frackville State Correctional Institution in Ryan Township, Schuylkill County, Pennsylvania. The treatment plant will be designed to remove 90 percent BOD₅ and suspended solids from an average waste flow of 0.10 mgd. Treated effluent will discharge to Stony Creek in Ryan Township.

9. *Lightnet D-85-13.* A fiber optic cable crossing of Assumpink Creek Site No. 20, a Comprehensive Plan reservoir project in West Windsor Township, Mercer County, New Jersey. The cable will be buried a minimum of three feet below the reservoir bed and will be jetted into place by means of a 2.5 inch diameter high pressure air or water jet. The fiber optic cable will follow the right of way of an existing overhead transmission line owned by Public Service Electric and Gas Company and is part of a new interstate electronic communication network.

10. *Kiamesha Artesian Spring Water Company D-85-20 CP.* An application for approval of existing Well No. 3 (Concord Well) for use as a backup source of water for the applicant's water supply system in the Town of Thompson, Sullivan County, New York. The well, which will provide up to 70 gallons of water per minute or 100,800 gallons per day is located immediately south of Chalet Road (Town Road #45) and east of Kiamesha Creek.

11. *Blue Ridge Real Estate/Big Boulder Corporation D-85-25.* A sewage treatment project to serve the "Big Boulder Lake" resort area in Kidder Township, Carbon County, Pennsylvania. The treatment plant will be designed to remove 93 percent BOD₅, 88 percent TSS and nutrients from an average waste flow of 0.225 mgd. Treated effluent will discharge to an unnamed tributary of Tunkhannock Creek in Kidder Township.

12. *Borough of Ambler D-85-26 CP.* A ground water withdrawal application to continue approvals for the applicant's Well Nos. 12 and 14. Dockets D-77-92 CP and D-77-16 CP granted interim approvals in 1978 and 1977 for Well Nos.

12 and 14, respectively, subject to review when the applicant submitted an acceptable ground water monitoring program and a report on the findings and analysis of the effects of Ambler withdrawals on the water resources of the area. In 1984 the applicant supplied an average of 1.89 mgd from nine wells to meet system demands. Well No. 12 is located 800 feet east of Houston Road in lower Gwynedd Township, Montgomery County, Pennsylvania and is expected to yield up to 0.22 mgd. Well No. 14 is located adjacent to Butler Pike in Upper Dublin Township, Montgomery County and is expected to yield up to 0.547 mgd.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearings.

The Commission will hold a public hearing on Tuesday, May 7, 1985, at 10:00 a.m. and 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey to consider the following application:

Philadelphia Electric Company D-69-210 CP (Final) Revised. An Application by the Philadelphia Electric Company (PECO) to temporarily, during 1985, revise portions of the Limerick Electric Generating Project as included in the Comprehensive Plan and to approve the temporary changes under Section 3.8 of the Compact. The proposed revisions consist of (1) a substitution of dissolved oxygen controls (average 5.0 mg/l and instantaneous of 4.0 mg/l) in lieu of the existing 59 °F temperature limitation to determine the availability of Schuylkill River water and (2) the release of varying amounts of water from Blue Marsh Reservoir and/or other water supply storage whenever the proposed dissolved oxygen limits or the existing flow limitation of 530 cubic feet per second (cfs) in the Schuylkill River at Pottstown would otherwise prohibit the consumptive use of water from the Schuylkill River. The quantity of water withdrawn will vary during the power ascension testing and start-up period. PECO estimates that Unit No. 1 will not operate at full power before September 1985. At full power water consumption will average 27 cfs (17.3 mgd) with a peak demand of 32.5 cfs (21 mgd.) The Limerick Electric Generating Project is located in Limerick Township, Montgomery County, Pennsylvania.

Documents relating to this item may be examined at the Commission's offices. Persons wishing to testify at this

hearing are requested to register with the Secretary prior to the hearing.

Public Information Briefings on Water Supply Charges

The Commission is currently considering new revenue arrangements to meet its prospective obligations for financing the proposed enlargement of two existing reservoirs in the Basin. Under its current program, anticipated revenues from water charges will fall far short of meeting future contract or bond repayment requirements if revenues are not increased by greatly raising present rates or by expanding the number of paying users. Based upon Delaware River Basin Compact Section 15.1(b), only surface water users who commenced or increased their water use after Compact enactment in 1961 are presently subject to user fees. As of 1984, those surface water users subject to DRBC charges included ten public water supply systems, seven electric power plants, and 11 industrial facilities. Presently, the vast majority of Basin water users are grandfathered and exempt from such charges.

In assessing potential arrangements for financing future water projects, the Commission believes that consideration must be given to possible modification of Federal Reservation Section 15.1(b) and potential extension of water charges, in some form, to pre-Compact water users.

The Commission invites comment by interested water users and other parties regarding potential modification of Section 15.1(b) and possible extension of the DRBC water charge program to assist in financing water projects benefitting the Basin.

Four public information sessions, one in each of the States comprising the Basin, will be held to brief interested parties and receive comments.

The information meetings will be held as follows:

April 30, 1985—1:30 p.m. and 7:00 p.m.,
Sheraton-Brandywine Inn—Ballroom
A, Route 202, 4727 Concord Pike,
Wilmington, Delaware

May 13, 1985—1:30 p.m. and 7:00 p.m.,
Holiday Inn—Lafayette Room, 260
Goddard Boulevard, King of Prussia,
Pennsylvania

May 20, 1985—1:30 p.m. and 7:00 p.m.,
Delaware River Basin Commission—
Goddard Conference Room, 25 State
Police Drive, West Trenton, New
Jersey

May 29, 1985—7:00 p.m., Holiday Inn—
Delaware Room, New Greenville
Turnpike Road, Route 23 and I-84,
Port Jervis, New York

Any specific new water pricing proposal would be subject to formal public hearing prior to adoption.

Parties interested in presenting statements at any of the sessions are requested to register with the Secretary by 4:00 p.m. of the previous workday.

Wide distribution of a detailed background paper describing the issues and options was made on March 29, 1985. Additional copies of the background paper are available upon request.

Susan M. Weisman,
Secretary.

April 16, 1985.

[FR Doc. 85-9768 Filed 4-22-85; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85-09-NG]

Natural Gas Imports; Bethlehem Steel Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 4, 1985, of the application of the Bethlehem Steel Corporation (Bethlehem) to import up to 12 Bcf of Canadian natural gas from Northridge Petroleum Marketing, Inc. (Northridge) for the period ending November 1, 1986. The daily rate would be up to 25 MMcf but would not exceed 6 Bcf in one year. Sales would be on a best-efforts basis with no penalty if Bethlehem reduces or suspends purchase, although Bethlehem will attempt to purchase an average of 15 MMcf of gas per day. The initial border price would be \$2.87 (U.S.) per Mcf but is subject to renegotiation at any time upon either party giving 30 days notice to the other. The contract is automatically renewed for additional two-year periods unless terminated by either party. Bethlehem requests that the authorization be granted by June 4, 1985.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of interventions, and written comments are invited. DATES: Protests, motions to intervene or notices of intervention, as applicable, and written

comments are to be filed no later than 4:30 p.m., on May 23, 1985.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6050

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION:

Bethlehem is an integrated steel producer engaged primarily in the manufacture and sale of steel and steel products. The natural gas that is the subject of this application will be used in the manufacturing process at its Burns Harbor, Indiana, plant, which converts raw materials into plates and sheets.

The gas to be imported would initially displace a portion of the gas being purchased from MidCon Ventures, Inc., an affiliate of Natural Gas Pipeline Company of America (Natural). Under the MidCon arrangement, Bethlehem is currently purchasing up to 25,000 MMBtu's per day delivered to the Burns Harbor plant by Natural and the Northern Indiana Public Service Company (NIPSCO). The MidCon gas began flowing on September 1, 1984, according to Bethlehem.

According to Bethlehem's application, the Canadian gas will come from reserves owned or controlled by producers in the Province of Alberta, Canada, or from such other sources as may be required from time to time. No new facilities will be required to implement the proposed importation. The imported volumes will be transported for Northridge by NOVA, an Alberta Corporation, to the Alberta border and thereafter will be transported to the international boundary at Emerson, Manitoba, by TransCanada Pipelines Limited. Bethlehem states that there are five potential transporters within the United States that have indicated a willingness to transport the gas for Bethlehem through existing pipeline facilities—ANR Pipeline Company, Great Lakes Transmission Company, Northern Natural Gas Company, Natural, and Midwestern Gas Transmission Company. No final transportation agreements has been reached at the date of the applicant's filing. The gas would ultimately be delivered to

NIPSCO, the existing utility supplier of the Burns Harbor, Indiana, plant, for redelivery by NIPSCO to Bethlehem.

Bethlehem and Northridge entered into a gas sales agreement dated February 22, 1985. Under that agreement, Northridge would make available on a best-efforts basis up to 25 MMcf of gas per day and 6 Rcf per year. Bethlehem would take an average of 15 MMcf of gas per day on a best-efforts basis, although it may take all the gas Northridge has available up to 25 MMcf per day. The primary term of the contract extends through November 1, 1986, and is automatically extended for successive two-year terms unless terminated by either party giving 60 days notice prior to the expiration of a term.

Deliveries under the contract will begin on the first day of the month following the month in which all necessary approvals are received unless this occurs during the last five days of the month. In that case, deliveries would commence on the first day of the second month following the month in which approvals are received.

The price at the point of importation initially will be \$2.87 (U.S.) per Mcf and will be subject to renegotiation at any time by either party giving the other 30 days notice. The contract also provides for renegotiation at a time the price netted back to Empress, Alberta, is lower than the Alberta border price set monthly by the Alberta Petroleum Marketing Commission. There is no minimum purchase obligation and the only take-or-pay requirement relates to volumes nominated by Bethlehem and actually delivered by Northridge to the intervening transporters at the time of contract termination. Sales and deliveries will be on a best-efforts basis by Northridge, as requested by Bethlehem in monthly volume nominations. Bethlehem retains the right to restrict or cease taking the imported supplies at any time and for so long as it deems expedient to do so.

Bethlehem maintains that the importation will be in the public interest. It asserts that the importation will place downward pressure on high-cost domestic suppliers. Bethlehem alleges that this downward price pressure ultimately benefits the residential, commercial and industrial customers of the local distributing companies which purchase from such domestic suppliers by fostering lower-priced gas supplies. Also, there are no disincentives to Bethlehem's switching to alternate lower-priced gas supplies or to other alternate fuels.

The decision on this application will be made consistent with the Department

of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., May 23, 1985.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request

for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the EPA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice in accordance with 10 CFR § 590.316.

A copy of Bethlehem's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C., on April 16, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-9719 Filed 4-23-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-08-NG]

Natural Gas Imports; N-REN Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 4, 1985, of an application from N-REN Corporation (N-REN), a wholly-owned subsidiary of IDI Management, Inc., to import up to 35,000 Mcf of Canadian natural gas per day on a best-efforts basis at \$2.87 (U.S.) per Mcf. The imported volumes are to be purchased from Northridge Petroleum Marketing, Inc. (Northridge) over an initial term beginning on the date of first delivery and ending November 1, 1986, with an automatic two-year extension unless terminated in writing by either party at least 60 days prior to that date. Additional one-year extensions would also be automatic unless terminated by a 60-day notice prior to the expiration of the then existing term. The maximum obligation during the initial term is 21.90 Bcf with deliveries in any given year not to exceed 10.95 Bcf.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act. Protests or petitions to intervene are invited. DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m., May 23, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9622
Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: N-REN operates a plant in East Dubuque, Illinois, which consumes natural gas as a process fuel and feedstock in the manufacture of anhydrous ammonia and by-products primarily for essential agricultural uses. N-REN proposes to import natural gas for its own use under an agreement executed on March 15, 1985, with Northridge, a Canadian corporation which has control over certain natural gas reserves from wells in the Province of Alberta, Canada. The agreement provides for the purchase and sale, on a best-efforts basis, of up to 35,000 Mcf of natural gas per day for an initial term starting with the date of first delivery and ending on the primary expiration date, November 1, 1986. The agreement has an automatic two-year extension beyond the primary expiration date unless terminated by written notice from either party at least 60 days prior to the primary expiration date. At the end of the two-year extension, the agreement provides for successive one-year extensions unless terminated by written notice by either party at least 60 days prior to the expiration of the then existing term. The first contract year begins on the date of first delivery and ends on the next November 1, with successive contract years ending on November 1 in the following year.

The maximum volume delivered in any given year is limited to 10.95 Bcf and to 21.90 Bcf during the initial term of the agreement. N-REN states in its application that sufficient reserves are controlled by and available to Northridge to supply the maximum daily volume of 35,000 Mcf called for under the agreement. The agreement contains no minimum purchase obligation or take-or-pay requirement and allows N-REN to revert totally to domestic supplies without penalty if the Canadian supply becomes uncompetitive.

Under the proposed import arrangement, the gas will be purchased from Northridge and delivered at the interconnection of the facilities of TransCanada Pipelines Limited and Great Lakes Gas Transmission Company (Great Lakes) at the international border between Canada and the United States in the vicinity of Noyes, Minnesota. Great Lakes will transport the gas to its interconnection with Northern Natural Gas Company (Northern) at either Carlton or Fortune Lake, Minnesota. Northern will then transport the gas over its existing facilities to Northern Illinois Gas Company (NI-Gas), N-REN's current distributor, which will then deliver the gas to N-REN's plant at East Dubuque, Illinois. N-REN will bear the cost of transporting the gas from the Canadian border to its plant.

The initial price of the imported gas at the international border will be \$2.87 (U.S.) per Mcf. The price may be renegotiated upon 30 days notice by either party subject to regulatory approvals. If negotiations fail, the agreement will terminate 30 days following cessation of negotiations. The agreement also provides for immediate renegotiation of the international border price if changes in the U.S./Canadian exchange rate or increases in transportation costs in Canada result in a price netback to Alberta lower than the Alberta border price. Combined transportation costs from the U.S./Canadian border have been projected to be no more than \$34 (U.S.) per Mcf.

N-REN contends that the importation of Canadian natural gas is in the public interest because it will enable it to be competitive in the manufacture of anhydrous ammonia fertilizer which is essential to the U.S. agricultural economy. It states that the nitrogen manufacturing and marketing business is highly competitive and that natural gas accounts for more than 70 percent of its variable manufacturing costs. According to N-REN, access to a competitively priced, secure supply is therefore essential. N-REN states that authorization of this import will help assure continued operation of its plant and will assist in the effort to produce essential agricultural chemicals at the least cost for the farming community of the U.S. Midwest. It believes that the absence of minimum bill and take-or-pay obligations, the right to renegotiate the contract price, and the right to terminate or extend the agreement after the initial term provide sufficient flexibility so that the import will remain competitively priced. Although the sales obligation of Northridge is on a best-

efforts basis, N-REN considers the reserves committed by Czar to be sufficient to supply the contract quantity. If these should be a temporary or permanent failure of supply, N-REN states that it will be free under the terms of the agreement to obtain gas supplies from other sources. Further, N-REN believes that the proposed import arrangement will foster competition in the gas industry.

The decision on this application will be made consistent with the Department of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., May 23, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an

oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of N-REN's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 15, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-9720 Filed 4-22-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-7-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 18, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on April 12, 1985, tendered for filing Substitute Fourth Revised Sheet No. 203 and Substitute Thirteenth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rates Schedule F-2 and Rate Schedule S-IS decreases in Consolidated Gas Transmission Corporation's ("Consolidated") underlying Rate Schedule RQ and Rate Schedule E.

Algonquin Gas requests that the Commission accept Substitute Fourth Revised Sheet No. 203 and Substitute Thirteenth Revised Sheet No. 213 to be effective March 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to allow Algonquin Gas to provide a credit on the next month's billing subsequent to Commission approval to effectuate the rate reduction filed herein as of March 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before April 26, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9761 Filed 4-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-23-000 and TA85-2-23-001]

Eastern Shore Natural Gas Co.; Tariff Filing

April 18, 1985.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on April 11, 1985, tendered for filing the following revised tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff:

A. Proposed Tariff Sheets To Be Effective May 1, 1985

Twenty-Eighth Revised Sheet No. 5
Twenty-Eighth Revised Sheet No. 6
Twelfth Revised Sheet No. 7
Twenty-Eighth Revised Sheet No. 10
Twenty-Eighth Revised Sheet No. 11
Twenty-Eighth Revised Sheet No. 12
Fifth Revised Sheet No. 13

B. Alternate Tariff Sheets To Be Effective May 1, 1985

Alternate Twenty-Eighth Revised Sheet No. 5
 Alternate Twenty-Eighth Revised Sheet No. 6
 Alternate Twelfth Revised Sheet No. 7
 Alternate Twenty-Eighth Revised Sheet No. 10
 Alternate Twenty-Eighth Revised Sheet No. 11
 Alternate Twenty-Eighth Revised Sheet No. 12
 Fifth Revised Sheet No. 13

Eastern Shore states that the purpose of the filing is to reflect (1) a Purchase Gas Cost Current Adjustment, (2) a Demand Charge Adjustment (3) a Deferred Gas Cost Adjustment, and (4) to report the Projected Incremental Pricing Surcharges. This filing is being made in accordance with Sections 20, 21, and 23 of Eastern Shore's FERC Gas Tariff.

Eastern Shore states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
 Secretary.

[FR Doc. 85-9762 Filed 4-22-85; 8:45 am]
 BILLING CODE 6717-01-M

[Project Nos. 4796-008; Project No. 4939-001]

**Niagara Mohawk Power Corp. et al.;
 Order Providing for Hearing and
 Granting Interventions**

Issued: April 15, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On June 4, 1981, Niagara Mohawk Power Corporation (NMPC) filed a license application for the Glen Park Project No. 4796, to be located at the site of a washed-out dam on the Black River in Jefferson County, New York. The license was issued on December 29,

1982.^{1 2} On February 17, 1983, the Brownville Power Company (BPC) filed a license application for the Brownville Project No. 4939, to be located at the site of another washed-out dam on the Black River immediately downstream from Project No. 4796.³ This application is still pending before the Commission.

On September 20, 1984, the Adirondack River Outfitters, Inc. (ARO) filed a motion to intervene out of time in the Brownville Project proceeding.⁴ ARO operates whitewater rafting trips on a reach of the Black River from Watertown, New York to a dam at Dexter, New York, about 7.9 miles in length. ARO, which began its service on the Black River in 1983, states that it guided 1,400 persons in 1983, an estimated 3,500 in 1984, and projects over 50,000 annually by 1989. ARO claims that this business would provide 120 jobs directly and interject millions of dollars per year into the local economy.

ARO asserts that a change in circumstances since the application for license for Project No. 4939 was filed justifies its late intervention. ARO claims that, because of the wash-out of the previous dams at the Glen Park and Brownville project sites in 1978, and also as a result of the Clean Water Act, the formerly polluted river has been cleansed and changed to a free-flowing stream with excellent whitewater sections in an attractive setting (i.e., a gorge between the Glen Park and Brownville sites). ARO states that whitewater rafting has become a very popular leisure activity and that the Black River includes a market area of 50 million people. Finally, ARO claims that the Black River has emerged as one of the Northeast's premier whitewater

rivers. In support of these statements, ARO included with its intervention request letters from the National Park Service of the United States Department of the Interior; the New York State Department of Environmental Conservation; and the New York State Office of Parks, Recreation, and Historic Preservation. ARO argues that: The Brownville Project's power generation benefits cannot compensate for the loss of these recreational resources;⁵ Section 10(a) of the Federal Power Act⁶ requires that the license be denied; and Environmental Impact Statement (EIS) is needed; and an evidentiary hearing should be held.

On December 10, 1984, the United States Department of the Interior (DOI) filed a supplement to its earlier letter of comment on the Brownville license application. DOI indicated that it has reassessed the recreational value and potential of the Black River and that the reassessment indicated that:

1. The Black River is recognized as one of only four rivers in the entire Northeastern United States which currently provides a high quality adventure rafting experience during the entire summer;

2. The Black River is one of only two adventure rafting rivers in New York State and offers the longest whitewater rafting season of any river in the state; and

3. The Black River appears to have significant future potential for increased whitewater rafting use.

On November 7, 1984, the American Whitewater Affiliation, Inc. (AWA) also filed a motion to intervene out of time in the Brownville Project proceeding. AWA, which represents kayakers, canoeists, and paddlers of non-powered craft, asserts that the Brownville Project would inundate some of the most exciting and rare rapids in the Black River run. According to AWA, this particular river segment represents a unique paddling resource because it is easily accessible by vehicle, it is near populated areas where food and lodging can be obtained, and it is on the route to other areas often paddled. AWA advances arguments similar to those presented by ARO concerning changed circumstances as its reason for late filing. AWA also states that technological advances in boat construction as well as in paddling techniques have expanded the frontiers of paddling to rivers, such as the Black.

¹ 21 FERC ¶ 62,537 (1982).

² On September 4, 1984, NMPC filed an application for a transfer of the license from itself to the Glen Park Associates (GPA). The purpose of the transfer was to permit GPA to utilize various tax advantages unavailable to NMPC that would ultimately save NMPC's ratepayers some \$30 million over forty years. That application is approved today by separate order (see Niagara Mohawk Power Corporation, 30 FERC ¶ 61, (1985)), because that transfer is in the public interest and is independent of, and not relevant to, the matters set for hearing in this order.

³ Another project located just downstream from Project No. 4939 (the exempted Dexter Project No. 2895, 19 FERC ¶ 61,229 (1982)) has not been challenged by the entities petitioning for intervention in this proceeding and thus is not included within the scope of this order. Another application for license (the proposed Woods Falls Project No. 8763, which would have been located on the Black River just upstream from the Glen Park development) would have been included in this order, but for the fact that it was rejected on February 28, 1985. A license is already outstanding on this site. (Project No. 2427), but the facilities have never been built. That project's surrender has not been made effective because of a failure to pay the accumulated annual charges.

⁴ ARO filed a supplement to its motion to intervene on October 19, 1984.

⁵ ARO also cites in support of its position that increase in private canoeing and kayaking on the river as well as sport fishing.

⁶ 16 U.S.C. 803(a) (1976).

that had heretofore been considered too dangerous. In general, AWA makes other arguments similar to ARO and requests similar relief. AWA also states, however, that it may be possible to redesign the proposed dam for Project No. 4939 so that it would facilitate closed boat and raft usage, as well as power generation.

Because the adjacent Glen Park Project No. 4796 had already been licensed, ARO filed on October 16, 1984, a petition to have the Commission impose conditions on the license for recreational purposes pursuant to its reserved authority under Articles 9, 12, 17, and 36 of the license,⁷ and a motion to intervene.⁸ The conditions that ARO wants imposed are:

1. That all inflow to the reservoir be released at the dam between 9AM and 4PM (a) four days per week including Friday, Saturday, and Sunday, from May 1 to December 30 and (b) daily from June 1 to September 15;
2. That boat passage facilities be built at the dam in conjunction with fish passage facilities; and
3. That the powerhouse be redesigned to prevent interference with passing boats and to minimize the negative visual impact.

ARO requests that a hearing be ordered if the licensee opposes these modifications.

We have examined the above-referenced pleadings filed by ARO and AWA in the Project Nos. 4939 and 4796 proceedings. We have also reviewed the answers to those pleadings submitted by NMPC and BPC. Essentially, those responses claim that there does not exist good cause for the late filing of the intervention requests, that they completed the required consultation with regard to recreational resources and that no significant problems were raised during that process, that there has been no change in circumstances, and that no new material issues of fact are presented by ARO and AWA. NMPC and BPC also claim that the Projects will produce a significant amount of power, that Congress has mandated the development of such renewable resources in the Public Utility Regulatory Policies Act of 1978 (PURPA),⁹ and that ARO does not

represent the public interest, but rather a private, commercial business venture.

None of these responses persuade us that a hearing need not be held here. We do not have sufficient information before us to evaluate the two projects' impacts on the newly developed whitewater recreation potential of the river. Nor do we know the extent to which power generation and whitewater recreation are incompatible. We believe both sides should be given the opportunity to develop a record on these matters. We further believe that there has been a sufficient change in circumstances here that justifies ARO and AWA raising these issues after the close of the comment period on Project No. 4939 and after the licensing of Project No. 4796. The agency letters support this view. As indicated earlier, on December 10, 1984, DOI filed a letter expressing its concern over the impact Project No. 4939 would have on the recreational resources of the river. Also, on March 19, 1985, DOI filed a letter with the Commission in which it expressed similar concerns with regard to Project No. 4796 and requested that the Commission order changes in the recreational plan for the project pursuant to Article 17 of the license.¹⁰ Moreover, merely because ARO has a monetary interest in the outcome of these proceedings, its views, like those of its customers and the members of AWA, are also a part of the overall "public interest". Finally, we note that, although Congress did express an interest in the expeditious development of hydropower in PURPA, Congress clearly indicated that this was to be accomplished consistent with applicable law and specifically with certain environmental statutes. Therefore, we do not believe that our duty to examine the possible environmental consequences of these projects, e.g. impact on whitewater recreation, has been negated by PURPA.

Two remaining points must be addressed. First, ARO and AWA claim that an EIS should be prepared for Project No. 4939. We believe that this request is premature. We have ordered a hearing to develop a factual record on limited issues with respect to the license application. This information will be useful in a subsequent determination of whether an EIS is or is not needed. But the question would encompass a

consideration of many environmental factors that are not of concern here. Thus, the findings of the Administrative Law Judge will be of help in deciding this issue at a later date. The parties may raise this issue at that time if they continue to believe that the environmental impacts of the project require preparation of an EIS.

Second, NMPC claims that the license articles cited by ARO in its petition to impose conditions on the license for Project No. 4796 do not reserve authority for the Commission to impose the relief requested. We disagree. Articles 12, 17, and 36 all reserve Commission authority to require modification of project structures or operation in order to accommodate all beneficial public uses, including recreational purposes. Of course, due process and the articles themselves require notice and an opportunity for hearing, which we are providing herein, before changes are ordered. Further, the changes ultimately required, if any, would have to be in the public interest. Thus, their effect on project economics, as well as their own economic value, must be taken into account. This is precisely the sort of information we seek in setting this matter for hearing.¹¹

Because of the nature and complexity of the issues raised by the pleadings and because of our need for a thorough airing of the facts upon which to base our decisions with regard to the licensing of Project No. 4939 and the modification of conditions for Project No. 4796, we conclude that the matter should be set for evidentiary hearing. The following issues should be addressed:

1. The value of the Black River for whitewater recreation;
2. The impacts on recreation that would be caused by reconstruction and operation of Project Nos. 4939 and 4796;
3. The compatibility of the projects with whitewater recreation, including alternative designs or operating regimes;
4. The value of the projects for power generation purposes under the proposed and alternative schemes of development or operating regimes.

The Adirondack River Outfitters, Inc. and the American Whitewater Affiliation, Inc. are granted intervention in these proceedings. They shall participate fully in the hearings and present testimony and evidence to support their positions as set forth in their filings.

¹⁰ Although in its initial comment letters on the projects DOI did not raise these recreational concerns, we have previously stated that, "[w]here the Commission receives differing recommendations from the same agency, it treats the most recent recommendation as controlling." Douglas Water Power Company, 29 FERC ¶ 61,185 (1984); Sierra Pacific Power Company, 19 FERC ¶ 61,307 (1982).

⁷ Under Commission regulations, any person may request that the Commission exercise discretionary authority vested in the Commission. See 18 CFR 385.207 (1984).

⁸ The motion to intervene is basically the same as the one filed in the Project No. 4939 proceeding.

⁹ Pub. L. No. 95-617.

¹¹ See Upper Peninsula Power Company, 14 FERC ¶ 63,060 (1981), *aff'd* FERC ¶ 61,147 (1981).

The Commission orders

(A) Pursuant to the provisions of the Federal Power Act, particularly sections 4(e), 10(a), 308, and 309, and the Commission's Rules of Practice and Procedure, a hearing shall be held for the limited purposes of determining the value of the use of the Black River for power generation as compared to whitewater recreation and the compatibility of the competing uses under the proposed scheme of development and operation or alternative schemes, as set forth in detail above.

(B) A Presiding Administrative Law Judge, who shall be designated by the Chief Administrative Law Judge, shall preside at the hearing in this proceeding. The Presiding Judge shall convene a prehearing Judge shall provide for an adequate opportunity for discovery for all participants, including staff, prior to the filing of direct testimony.

(C) The motions to intervene filed by the Adirondack River Outfitters, Inc. and the American Whitewater Affiliation, Inc. are granted to allow their full participation in the hearing on the issues set forth in their filings and as discussed in this order.

(D) The Secretary shall cause prompt publication of this order in the *Federal Register* and shall otherwise give appropriate notice in accordance with Rules 2009 and 2010 of the Commission's Rules of Practice and Procedure, 18 CFR 385.2009 and 385.2010 (1984).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9763 Filed 4-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-23-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Petition for Declaratory Order

Issued: April 17, 1985.

On March 18, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, filed a petition for a declaratory order that errors in the calculation of certain volumes of natural gas which Northern purchased resulted in the payment for the actual volumes of natural gas at prices which exceed the maximum lawful prices under the Natural Gas Policy Act of 1978, (NGPA).¹ Northern believes that this

constitutes a violation of the NGPA, and asks that the Commission exercise its jurisdiction by ordering refunds with interest.

Northern alleges that certain errors caused the inaccurate calculation of the amount of gas actually being delivered to Northern by Sellers² which resulted in the overpayment of an amount more than \$162,000. In the spring of 1984, Northern discovered the overpayment, and demanded repayment from Sellers. When Sellers refused, Northern withheld proceeds due Sellers for gas purchased from them.

On December 27, 1984, Sellers filed an action in the United States District Court for the Northern District of Oklahoma, No. 84-C-971B, seeking an accounting of all proceeds withheld and payment of such proceeds by Northern, together with interest. Sellers alleges that provisions of their contracts with Northern bar adjustments extending beyond ninety days.

Northern contends that its errors in calculating the volumes of gas produced resulted in Sellers receiving a first sale price in excess of the maximum lawful price applicable to the gas being purchased which violates § 270.101(a) of the Commission's regulations. Northern alleges that in not repaying such amounts, Sellers has also violated § 270.101(e) which establishes the general refund obligation. Northern contends that the regulations are applicable to all overpayments without regard to the cause of the overpayment.

Northern requests that the Commission take jurisdiction of this matter and issue an order determining whether error in the calculation of the volumes of natural gas purchased which results in charging and collecting prices in excess of the maximum lawful price is a violation of the NGPA, and that Sellers be subject to the § 270.101(e) refund obligation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

¹ Northern entered into gas purchase contracts with a number of parties (Sellers) all of which contracts were amended in July 1980. Northern is purchasing gas from Sellers under these contracts under a small producer certificate issued in Docket No. CS72-1020.

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9764 Filed 4-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-37-002]

Northwest Pipeline Corp.; Change in Rates

April 18, 1985.

Take notice that on April 12, 1985 Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Substitute Eighteenth Revised Sheet No. 10

This tariff sheet reflects a reduction in the surcharge adjustment of .167¢ per therm resulting from the inclusion of a \$4.5 million credit to Account No. 191 attributable to incremental fuel and shrinkage at Northwest's Opal and Ignacio liquids extraction plants for the period September through December 1984. Northwest agreed to credit such incremental fuel and shrinkage to Account No. 191 as part of an Offer of Settlement in Docket Nos. TA84-2-37-000 and 001, TA85-1-37-000 and 001, TA85-2-37-000, and 001, and RP85-1-000. The Offer of Settlement was approved by Commission order dated March 19, 1984.

Northwest has requested an effective date of May 1, 1985 for the above referenced tariff sheet.

A copy of this filing is being served on all parties of record in Docket No. RP72-154, on all jurisdictional customers and affected state agencies, and all intervenors at Docket No. TA85-3-37-000 and 001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

¹ 15 U.S.C. 3301-3432 (1982).

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-9785 Filed 4-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2541-001]

Utilities Holding Co. and Cascade Power Co.; Application for Transfer of License (Minor)

April 16, 1985.

Take notice that Utilities Holding Company, Licensee for the Cascade Project No. 2541, and Cascade Power Company have requested that the project license be transferred to Cascade Power Company. The Cascade Project is located on the Little River in Transylvania County, North Carolina. The project's installed capacity is 825 kilowatts.

Comments, Protests, or Motion to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before May 28, 1985.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of

the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-9766 Filed 4-22-85; 8:45 am]

BILLING CODE 6717-01-M

1984 Annual Oil Pipeline Construction Costs

April 19, 1985.

The Federal Energy Regulatory Commission (FERC), by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Take notice that the FERC is now giving consideration to costs associated with the construction of oil pipelines during 1984. These costs will be translated to 1984 price index numbers which show the relative costs of oil pipeline construction using 1947 Period Costs equal to 100.

In the development of the annual indices, major consideration is given to data submitted by jurisdictional oil pipelines pursuant to valuation orders in 18 CFR 360.103 and 360.104 (formerly 49 CFR 1260.103 and 1260.104). Such data include pipe purchases, tank construction, pump and motor purchases, buildings constructed, labor cost for laying new pipelines, and other related pipeline construction and facilities costs. In addition, consideration is given to other sources of cost data pertinent to oil pipelines.

Any person desiring to submit information for the FERC's consideration in the development of the 1984 annual oil pipeline construction indices should file an original and six copies of such information with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 22, 1985. Copies of the filings will be available for public inspection.

Francis J. Conner,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85-9767 Filed 4-22-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of March 15 Through March 22, 1985

During the Week of March 15 through March 22, 1985, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: April 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 15 through Mar. 22, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 16, 1985	H.H. Gungoll & Associates, Washington, DC	HEF-0572	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V in connection with the Apr. 5, 1984 remedial order issued to H.H. Gungoll & Associates.
Do	Landsea Holding Co., Washington, DC	HEF-0573	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V in connection with the Dec. 15, 1983 consent order entered into with Landsea Holding Co.
Mar. 19, 1985	Bernard Schafer Petroleum, Lansing, MI	HEE-0132	Exception to reporting requirements. If granted: Bernard Schafer Petroleum would not be required to file Form EIA-782B "Reseller's/Retailer's Monthly Petroleum Product Sales Report."
Do	Resources Extraction and Processing Co., Washington, DC	HEF-0574	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR part 205, subpart V in connection with the Aug. 10, 1984 consent order entered into with Resources Extraction and Processing Co.
Do	Tenneco Oil Co./Major Oil Co. of Georgia, Washington, DC	RR7-6 and RR7-7	Request for modification/recission in the Tenneco refund proceeding. If granted: The July 23, 1982 and Aug. 18, 1982 decisions and orders (Case Nos. RF7-16 and RF7-100) issued to Major Oil Co. of Georgia would be modified regarding the firm's application for refund submitted in the Tenneco refund proceeding.
Mar. 20, 1985	Placid Oil Co., Washington, DC	HRX-0117	Supplemental order. If granted: The Feb. 2, 1985 remedial order issued to Placid Oil Co. (Case No. BRO-1433) would be modified regarding the Glass Unit, which would be found to qualify for the stripper well exemption.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

(Week of Mar. 15 through Mar. 22, 1985)

Date	Name and location of applicant	Case No.	Type of submission
Do	Thornton Oil Corp., Louisville, KY	HQF-0575	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement a second stage refund proceeding in connection with the consent order entered into with Thornton Oil Corp. (Case No. HEF-0497).
Mar. 21, 1985	Brazoria Energy, Inc. & Gerald W. Cullum, Longview, TX	HRD-0276, HRH-0276	Motions for discovery and evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the statement of objections submitted in response to a proposed remedial order (Case No. HRO-0259).

REFUND APPLICATIONS RECEIVED

(Week of Mar. 15 to Mar. 22, 1985)

Date	Name of refund proceeding/ name of refund applicant	Case No.
3/18/85	Seminole Refining/Baxter's Asphalt & Concrete, Inc.	RF111-2.
3/18/85	Little America Refining	RF112-1.
3/18/85	The M.H. Cook Pipeline Construction	RF112-2.
3/19/85	Hertz Corp./Dresser Industries	RF76-107.
3/19/85	Hertz Corp./Liton Industries	RF76-108.
3/19/85	Hertz Corp./Lucky Stores	RF76-109.
3/19/85	Hertz Corp./American Greetings	RF76-110.
3/19/85	Hertz Corp./Ethyl Corp.	RF76-111.
3/19/85	Hertz Corp. General Instrument	RF76-112.
3/19/85	Hertz Corp./Meredith Corp.	RF76-113.
3/19/85	Hertz Corp./A.C. Nielson	RF76-114.
3/19/85	Richards Oil/Waste Research & Reclamation	RF70-25.
3/19/85	MAPCO/Cal Gas Corp.	RF108-6.
3/19/85	Wilco Chemical Corp./Fortmeyer's Inc.	RF115-1.
3/19/85	Hunt Petroleum Corp./Tenneco Oil	RF114-1.
3/19/85	Kansas Nebraska Natural/Cal Gas Corp.	RF113-1.
3/20/85	Seminole Refining/Haugabook Oil Co.	RF111-3.
3/20/85	Hertz Corp./James River Corp.	RF76-115.
3/20/85	Hendel's, Inc./Colonial Tire	RF79-8.
3/21/85	Bayou State Oil/Ida Gasoline/Matthews Oil Co., Inc.	RF117-1.
3/21/85	Northwest Pipeline/Arco, Inc.	RF116-1.
3/21/85	Hertz Corp./Ex-Cell-O Manufacturing System Co.	RF76-116.
3/21/85	Texas Oil & Gas/Gulf States Oil & Gas Refining Co.	RF42-11.
3/22/85	Hendel's, Inc./Fleming's Store	RF79-7.
3/22/85	Kansas Nebraska Natural Gasoline/Little America Refining Co.	RF113-2.
3/18/85 through 3/22/85	Gulf Refund Applications	RF40-1894 through RF40-2160.

[FR Doc. 85-9784 Filed 4-22-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 25 Through March 29, 1985

During the week of March 25 through March 29, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also lists a submission that was dismissed by the Office of Hearings and Appeals.

Appeals

Kramer Associates, Inc., March 25, 1985, HFA-0275

Kramer Associates, Inc. (Kramer) filed an Appeal from a partial denial by the Inspector General (IG) of the DOE of a Request for Information which Kramer had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that certain material withheld pursuant to Exemption 4 of the FOIA should be released to Kramer, but that other material was properly withheld pursuant to Exemptions 4, 5, 7(C), and 7(D). The DOE also found that the IG did not adequately justify withholding other material pursuant to Exemptions 7(C), and 7(D), and these documents were remanded for a more specific determination. An important issue considered in this case was the privacy interest of individuals named in agency investigatory documents. Kramer also filed an Appeal under the Privacy Act for amendment of the documents it had requested. The DOE found that Kramer never received an initial determination on its Privacy Act request, and that therefore there was no basis for considering the Appeal.

William G. Sack, March 25, 1985, HFA-0280

William G. Sack filed an Appeal from a denial by the Inspector General (IG) of the Department of Energy of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the report requested by Mr. Sack has been completed since the IG's initial determination. Since the requested report now exists, the DOE found that the IG must either release the report to Mr. Sack or issue a determination justifying its withholding.

Remedial Order

Holly Energy, Inc. and Holly Corp., March 29, 1985, HRO-0215

Holly Energy, Inc. and Holly Corporation (Holly) objected to a Proposed Remedial Order which the Tulsa Office of the Economic Regulatory Administration (ERA) issued to the firm on March 19, 1984. In the Proposed Remedial Order, the ERA found that during the period June 1979 through December 1980, Holly erroneously classified crude oil produced from three of its properties as newly discovered crude oil, and charged prices for that crude oil in excess of those permitted pursuant to 10 CFR 212.73, 212.74 and 212.79. After considering the firm's objections the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order of the Department

of Energy. The important issues discussed in the Decision and Order include (i) whether Holly ended its liability for the overcharges by making direct payments to first purchasers of the firm's crude oil, and (ii) whether equitable principles required the DOE to seek restitution from the first purchasers rather than from Holly.

Requests for Exception

Riner Oil Co., March 29, 1985, HEE-0110

Riner Oil Company filed an Application for Exception seeking relief from the requirement that the firm complete and submit Form EIA-782B, the Reseller/Retailers' Monthly Petroleum Product Sales Report. In a Proposed Decision and Order issued on January 14, 1985, the DOE found that Riner had not shown that the burden which completing the Form placed upon the firm outweighed the benefit to the nation provided by the EIA-782B survey results. The firm submitted a Statement of Objections to the Proposed Decision and Order on January 23, 1985. In considering the firm's objections to the Proposed Decision, the DOE found that the firm had not demonstrated that filling out the Form placed a burden on the firm incommensurate with the burden placed on similar firms. Accordingly, exception relief was denied.

Varibus Corp., Gulf States Utilities Corp., March 28, 1985, HEE-0060; HER-0077

Varibus Corporation and Gulf States Utilities Corporation filed an Application for Exception from the provisions of 10 CFR 212.93 in which the firms sought retroactive relief from any price-violations in sales of No. 2 and No. 6 fuel oil to Gulf States from Varibus, its wholly owned subsidiary, during 1973 and 1974. In considering the request, the DOE found that Gulf States had passed along to its electricity customers any overcharges on fuel oil purchased through Varibus. Accordingly, the DOE concluded that neither Varibus nor Gulf States had experienced a hardship, inequity, or unfair distribution of burdens caused by the regulations.

Motions for Discovery

Indian Wells Oil Co., March 26, 1985, HRD-0093 and HRH-0093

Indian Wells Oil Company filed Motions for Discovery and an Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm. In considering Indian Wells' discovery motion, the DOE determined that the firm had not laid a proper basis for administrative record and contemporaneous construction discovery of 10 CFR Part 212. Subparts E and K. The DOE further

determined that Indian Wells failed to show the relevance of audit-related discovery. Accordingly, the Motion for Discovery of audit-related discovery. Accordingly, the Motion for Discovery was denied. Finally, the DOE denied Indian Wells' evidentiary hearing request because there were no genuine disputed issues of fact.

Liberty Trading Co., Ray Levrier, March 28, 1985, HRD-0181; HRH-0181

On October 27, 1983, Liberty Trading Company and Ray Levrier filed motions for discovery and for evidentiary hearing in connection with a Proposed Remedial Order issued by the Economic Regulatory Administration to the firm and Ray Levrier on April 29, 1983. The motion for discovery sought information on administrative records and unofficial contemporaneous agency constructions of the regulations relied on by the Economic Regulatory Administration, and further explanation of the allegations made in the PRO. The motion for evidentiary hearing sought permission to present testimony of persons experienced in the petroleum industry on the functions traditionally and historically associated with resales of crude oil, and the testimony of DOE employees regarding the meaning of the phrase "performs no service or other function traditionally and historically associated with the resale of crude oil." The Office of Hearings and Appeals denied the motions in their entirety on the grounds that the requested discovery and hearing would not adduce information which was relevant and material to the resolution of any contested factual issues in the Proposed Remedial Order proceeding.

Metropolitan Enterprises, Inc., March 28, 1985, HRD-0056

Metropolitan Enterprises, Inc. (Metropolitan) filed a Motion for Discovery on June 8, 1982 in connection with a Statement of Objections to a Proposed Remedial Order that the Economic Regulatory Administration (ERA) issued to the firm on February 24, 1982. In its discovery motion, Metropolitan requested responses to interrogatories and the production of related documents in support of its contentions that: (i) The ERA's audit program improperly discriminated against resellers; (ii) the DOE did not give proper consideration to the impact of its regulatory actions on small businesses, in contravention of section 18(a)(9) of the Federal Energy Administration Act (FEAA), 15 U.S.C. 777(a)(9); (iii) the Special Report Order issued to the firm on August 14, 1979 was in violation of the Federal Reports Act, 44 U.S.C. 3509; and (iv) the ERA had inconsistent and contradictory policies regarding "netting" of overcharges with undercharges, the assessment of interest on overcharges, the use of the Equal Application Rule in 10 CFR 212.93(e), the manner of calculating unrecouped increased costs, the valuation of inventory costs, the sequence of recovering increased product and non-product costs, and the applicability of the "new item rule," 10 CFR 212.111, to sales of unleaded gasoline. In considering the Motion for Discovery, the DOE determined that the discovery sought by the firm would not elicit evidence that was relevant and

material to the issues raised in the Statement of Objections. Accordingly, the Motion for Discovery was denied.

R.P. Trading Co./Seldon R. Harris, Ralph Pedler, Economic Regulatory Administration, March 28, 1985, HRH-0030; HRH-0242; HRD-0242; HRD-0250

R.P. Trading Company and Seldon R. Harris filed a Motion for Evidentiary Hearing and Ralph Pedler filed Motions for Discovery and an Evidentiary Hearing (the parties' evidentiary hearing motions are identical) in connection with a Proposed Remedial Order (PRO) issued to the parties. The Economic Regulatory Administration also filed a Motion for Discovery. The DOE granted the respondents an evidentiary hearing on the issue of whether they provided traditional and historical reseller services in each transaction in which the PRO found a violation of the layering regulations, 10 CFR 212.186. The respondents were also permitted to present evidence relating to the personal liability of R.P. Trading Co.'s corporate officers. The other requests were denied.

Motion for Evidentiary Hearing

M&M Minerals Corp., March 28, 1985, HRH-0031

On March 18, 1983, M&M Mineral Corp. et al. filed a renewed Motion for an Evidentiary Hearing concerning two issues related to a Proposed Remedial Order (PRO) issued to the firm. In considering M&M's submission, the Office of Hearings and Appeals found that neither issue fell within the ambit of the renewed Motion contemplated by an earlier Decision and Order in this PRO proceeding. Accordingly, M&M's Motion was denied.

Implementation of Special Refund Procedures

Aminoil U.S.A., Inc., March 29, 1985, HEF-0007

The Office of Hearings and Appeals issued a Decision and Order setting forth procedures to be used in filing applications for refund of a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with Aminoil U.S.A., Inc. The funds will be available to customers who were injured as a result of purchases of natural gas liquid products from Aminoil and its subsidiaries, affiliates, and predecessors in interest during the period September 1, 1973 through January 28, 1981. Applications for refund must be postmarked within 90 days of the publication of the decision in the Federal Register. Specific information to be included in refund applications is discussed in the decision.

J.E. DeWitt, Inc., Hines Oil Company, March 27, 1985, HEF-0062; HEF-0092

On March 27, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of \$14,450.18 (plus accrued interest) obtained as a result of Consent Orders entered into by J.E. DeWitt, Inc. (DeWitt) and Hines Oil Company (Hines). The funds will be available to customers who purchased motor gasoline from DeWitt during the period May 1, 1979 through July 31, 1979 or from Hines during the period March 1, 1979 through July 31, 1979. Successful applicants will receive

refunds proportionate to the volume of motor gasoline they purchased from one of the consent order firms.

Edwards Mantz d/b/a A-1 Arco, et al., March 27, 1985, HEF-0509 through HEF-0556

The DOE issued a Decision and Order setting forth the procedures it will use to distribute \$499,097 which it received as the result of consent orders entered into with 48 California motor gasoline retailers. The DOE decided that the funds should be distributed in a two-stage process. During the first stage the DOE will attempt to refund moneys to customers of any of the 48 retailers who can document their purchases. The DOE will accept first stage applications for refund until 90 days after publication of the Decision and Order in the Federal Register. If any funds remain after first stage refund procedures are completed, the DOE will establish appropriate second stage refund procedures.

Refund Applications

Standard Oil Co. (Indiana)/Cars-A-Washing, Inc., March 28, 1985, RF21-12386

The DOE issued a Decision and Order concerning duplicate refunds applied for and received by a retailer of Amoco motor gasoline in the Amoco Special refund proceeding. Cars-A-Washing received two refunds when it was entitled to only one. The DOE decided that the owner of Cars-A-Washing must return one refund as well as additional accrued interest, and also must submit a written explanation of why he had filed two refund applications, and had not notified the DOE about his duplicate refund.

Standard Oil Co. (Indiana)/Ralph J. Johnson, March 27, 1985, RF21-12387

The DOE issued a Decision and Order concerning duplicate refunds applied for and received by a retailer of Amoco motor gasoline in the Amoco Special refund proceeding. Ralph J. Johnson received two refunds when it was entitled to only one. The DOE decided that Johnson must return one refund as well as additional accrued interest, and also must submit a written explanation of why he had filed two refund applications, and had not notified the DOE about his duplicate refund.

Vickers Energy Corp./Sikeston General Oil Co., March 27, 1985, RF1-374

Sikeston General Oil Company, a motor gasoline reseller, sought a portion of the Vickers Energy Corporation consent order fund based on purchases below the small claim threshold figure of 50,000 gallons per month. After analyzing the firm's application for refund, the DOE concluded that Sikeston should receive a refund based upon the volume of its Vickers motor gasoline purchases during the consent order period. Accordingly, the Application for Refund was granted.

Dismissal

The following submission was dismissed:

Name	Case No.
Cedar Valley Cooperative Company	HEE-0119

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

April 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-9796 Filed 4-22-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of \$110,925 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Consumers Oil Company (Case Number HEF-0055).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the *Federal Register* and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to the above case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585. (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision, and Order set out below. The Proposed Decision relates to a Consent Order entered into by Consumers Oil Company (Consumers). The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent

Order settled possible pricing violations in Consumers' sales of refined petroleum products to customers during the relevant audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Consumers pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those direct and indirect customers of Consumers who establish that they were injured by Consumers' alleged overcharges. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: April 16, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Consumer Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0055.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Consumers Oil Company (Consumers) of Rosemead, California.

I. Background

Consumers Oil Company is a "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. An ERA audit of Consumers' operations during the period October 1, 1973 through September 30, 1976 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Notice of Probable Violation (NOPV) issued to Consumers on January 3, 1979, the ERA alleged that during the audit period Consumers overcharged its customers by \$2,542,131. In order to settle all claims and disputes between Consumers and the DOE regarding Consumers' compliance with the DOE price regulations in sales of gas oil, diesel fuel, and motor gasoline during the audit period, the firm entered into a Consent Order with the DOE on May 29, 1980. Under the terms of the Consent Order, Consumers agreed to the following: (1) To issue direct refunds totaling \$347,437 by cash or credit memoranda to customers of gas oil and diesel fuel who either were end-users or had suffered alleged overcharges of less than \$10,000; (2) to roll back prices for a total of \$114,823 in sales of motor gasoline; and (3) to remit \$110,925 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. This latter payment was intended to settle any alleged overcharges to non-end-user customers of diesel fuel or gas oil where the alleged overcharge amount exceeded \$10,000. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Consumers does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597

(1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Consumers consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers of Consumers who were injured by the alleged price violations. Exhibits B and C of the Consent Order list the names of all those customers who were allegedly overcharged by Consumers. As indicated above, however, all of the listed customers except non-end-users who were allegedly overcharged by more than \$10,000 were to receive direct refunds from Consumers, under the terms of the Consent Order. The Exhibits to the Consent Order list only one non-end-user customer who was allegedly overcharged by more than \$10,000. That firm is Powerine Oil Company (Powerine). The Consent Order Exhibits indicate that the \$110,925 placed in the DOE escrow account was solely attributable to Consumers' alleged overcharges in sales of diesel fuel to Powerine.¹ In our view, it is therefore likely that Powerine and any customers who purchased No. 2 oils (No. 2-D diesel fuel or No. 2 heating oil) from Powerine during the consent order period are the only firms who will be eligible for refunds in the present proceeding.²

Powerine, a small, independent refiner and marketer, resold the diesel fuel it purchased from Consumers. We propose that Powerine be required to demonstrate that it did not pass on to its customers price increases implemented by Consumers. See, e.g., *Vickers*. This type of showing is a prerequisite to a finding that Powerine experienced injury. See 10 CFR 205.280. In order to qualify for a refund, Powerine must show that during the consent order period it would have maintained its prices for No. 2 oils at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, Powerine should demonstrate that at the time it purchased diesel fuel from Consumers, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges to its customers. In addition, Powerine must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. See *Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). Reseller claimants who purchased No. 2 oils from Powerine during the consent order period will have to make the same showing of injury in order to be eligible for a refund.

Nevertheless, as in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we will adopt in this case is used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consumers Consent Order is based on a number of considerations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently.

Under the presumption we are adopting, claimants who resold No. 2 oils purchased from Powerine will not be required to submit any additional evidence of injury beyond purchase volumes if their refund claims are based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the time period of the Consent Order was quite distant, we believe that the establishment of a presumption of injury for all claims of

¹ According to Exhibit B of the Consent Order, Powerine should have received a direct refund of \$10,000 to compensate for any alleged overcharges by Consumers in sales of gas oil. Powerine will therefore not be eligible in the present proceeding to apply for a refund based on its purchases of gas oil from Consumers.

² Under the refiner price regulations, Powerine was required to allocate its increased costs for purchases of diesel fuel to its selling prices for No. 2 oils. See 10 CFR 212.83(c)(1)(i)(A). Accordingly, any alleged overcharges by Consumers in sales of diesel fuel to Powerine which Powerine did not absorb would have been passed through to all of Powerine's No. 2 oil customers. We note that since No. 2 oils were decontrolled effective July 1, 1970, 41 Fed. Reg. 24516 (June 16, 1976), the Consumers consent order period for those products is October 1, 1973 through June 30, 1976.

In addition, during five months of the consent order period (February through June 1976), Powerine was permitted to allocate a portion of its increased diesel fuel costs to motor gasoline. See 10 CFR 212.83(d)(2). We intend to investigate further whether such an allocation occurred and, if so, to allow Powerine's motor gasoline customers to apply for refunds in the present proceeding.

\$5,000 or less is reasonable.³ See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

Some of the customers who purchased No. 2 oils from Powerine during the consent order period may have been end-users or ultimate consumers. As in many prior special refund cases, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured to the extent that the alleged overcharges settled in the Consent Order were passed through to them by Powerine. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See *Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209, and cases cited therein. We have therefore concluded that end-users of No. 2 oils purchased from Powerine experienced the impact of any overcharges which were passed along by Powerine and need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that the Consent Order does not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case in order to fashion a refund plan which will correspond most closely to the injuries experienced. See, e.g., *Marion*. As discussed above, Powerine was the only allegedly overcharged customer identified in the Consent Order or the ERA audit files that did not receive a direct refund from Consumers. Moreover, the entire refund amount deposited by Consumers in the

DOE escrow account was specifically attributable to alleged overcharges in sales of diesel fuel to Powerine. We therefore propose that Powerine be permitted to apply for a maximum refund equal to the entire consent order fund, i.e., \$110,925, plus accrued interest. As indicated above, however, in order to qualify for a refund above the threshold level, Powerine will be required to demonstrate that it did not pass through Consumers' alleged overcharges to its own No. 2 oil customers. In the event that Powerine is unable to prove injury for the total amount of the alleged overcharges, the remaining monies in the consent order fund will be available for distribution to customers who purchased No. 2 oils from Powerine. As in prior refund cases, we will adopt a presumption that any alleged overcharges passed on by Powerine were spread equally over all gallons of No. 2 oils marketed by the firm during the consent order period. See *Conoco, Inc./Banco Properties, Inc.*, 12 DOE ¶ 85,117 at 88,362 (1984). The OHA has referred to this presumption in the past as a volumetric refund amount. In the absence of better information, the volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.⁴ The volumetric refund factor for customers who purchased No. 2 oils from Powerine will be determined by dividing the amount remaining in the consent order fund after any refund to Powerine by the total volume of No. 2 oils sold by Powerine during the consent order period. This result in a refund amount for each gallon of No. 2 oils which an applicant purchased from Powerine. In addition, successful refund applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

We further propose to establish a minimum amount of \$15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*

⁴ We also recognize that the impact on an individual purchaser could have been greater than the volumetric refund amount. Any purchaser is therefore allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges passed on by Powerine. See, e.g., *Amtel, Inc.*, 12 DOE ¶ 85,703 at 88,233-34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the *Federal Register*, a copy will be provided to Powerine Oil Company, 12354 Lakeland Road, Santa Fe Springs, California 90670. If appropriate, we may also publicize this proceeding in local newspapers in the areas where Consumers and Powerine conducted business.

In the event that money remains after all first state claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage of this refund proceeding is completed.

It is therefore ordered that the refund amount remitted to the Department of Energy by Consumers Oil Company pursuant to the Consent Order executed on May 29, 1980, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-9782 Filed 4-22-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding \$449,287.18 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the following parties; Busler Enterprises, Inc. (Case No. HEF-0045), Eastern Petroleum Corp. (Case No. HEF-0066), FKG Oil Company (Case No. HEF-0073), General Equities, Inc. (Case No. HEF-0078), General Equities, Inc. (Case No. HEF-0078) and Indian Oil Co. (Case No. HEF-0095).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the *Federal Register* and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All

³ As in prior refund cases, resellers whose potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold amount. Powerine, too, may limit its claim to the threshold amount.

comments should conspicuously display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT:

Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to five Consent Orders entered into by the DOE and the following parties: Busler Enterprises, Inc., Eastern Petroleum Corp., FKG Oil Company, General Equities, Inc., and Indian Oil Co. (the consent order firms). These Consent Orders settled possible pricing violations in the firms' sales of motor gasoline to customers during the consent order periods referred to in Appendix A to the Proposed Decision.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the five Consent Orders. The DOE has tentatively decided that these consent order funds should be distributed to those customers of the consent order firms who establish that they were injured by the firms' alleged overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from the consent order firms. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: April 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firms: Busler Enterprises, Inc., Eastern Petroleum Corp., FKG Oil Co., General Equities, Inc., and Indian Oil Co.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0045, HEF-0086, HEF-0073, HEF-0078, HEF-0095.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement proceedings to distribute the funds received pursuant to Consent Orders entered into by the DOE and the following parties: Busler Enterprises, Inc. (Busler) of Evansville, Indiana; Eastern Petroleum Corp. (Eastern) of Annapolis, Maryland; FKG Oil Co. (FKG) of Belleville, Illinois; General Equities, Inc. (General) of Kensington, Connecticut; and Indian Oil Co. (Indian) of Madison, Maine (hereinafter collectively referred to as the consent order firms). The total amount of funds that is subject to distribution in this proceeding is \$449,287.18.

I. Background

Each of the consent order firms is a "reseller-retailer" of "motor gasoline" as these terms were defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes with the DOE concerning certain sales of motor gasoline. Each Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, each Consent Order states that the consent order firm does not admit that it committed such violations.

Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability regarding sales of motor gasoline during the consent order periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending

distribution by the DOE. The names and locations of the firms, the settlement amounts and the dates of the consent order periods are set forth in Appendix A to this Proposed Decision.

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶82,553 (1982); *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement Subpart V proceedings with respect to the five consent order funds and have determined that it is appropriate to establish such proceedings. Insofar as possible, these consent order funds should be distributed to those customers of the consent order firms who were injured by the consent order firms' pricing practices which allegedly were in violation of DOE regulations.¹ We therefore propose to establish a claims procedure in which we will accept applications for refund from all customers who can demonstrate that they were injured as a result of any alleged overcharges in sales of motor gasoline by one of the consent order firms during the appropriate consent order period.

The consent order firms' customers include gasoline resellers, i.e., retailers and wholesalers. We propose that in order to receive a refund, these firms be required to demonstrate that they did

¹ The ERA audit files do not identify customers of Busler, Indian, or FKG, and we solicit information concerning the names and addresses of such customers. The ERA audit files for the other two consent order firms, Eastern and General, identify a number of customers who purchased motor gasoline directly from those firms during the audit periods. While no specific alleged overcharge amounts are indicated for these customers, they may well have been adversely affected by the alleged overcharges by Eastern and General and they will be given notice of this proceeding and an opportunity to request a refund.

not pass on to their customers the price increases implemented by the consent order firm. *See, e.g., Vickers*. In other words, to qualify for a refund, resellers or motor gasoline purchased from one of the consent order firms must show that during the consent order period they would have maintained their prices for the products at the same level had the alleged overcharges not occurred.² While there are a variety of ways to make this showing, a reseller may demonstrate that at the time if purchased motor gasoline from a consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In any case, the reseller must always show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.³ The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by the consent order firms during the consent order periods. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding

claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

In each of the five cases being considered here, the information available in the ERA audit files is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. We therefore propose to use the volumetric method to allocate the consent order fund in each case. To determine the volumetric factor, each consent order fund will be divided by the estimated total volume of motor gasoline sold by the consent order firm during the relevant consent order period.⁴ The per gallon volumetric refund amounts are set forth in Appendix A.⁵ In each case, this results

in a refund amount of each gallon of motor gasoline which an applicant purchased from the consent order firm. The interest which has accrued on the money in each escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

We also propose to adopt a presumption of injury with respect to small claims. The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in each Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost of the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase covered products from one of the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchased below a threshold level.⁶ Previous OHA refund decisions

distributed from the General and Indian escrow funds until after the close of the appropriate period for filing applications.

* We propose that resellers who made only spot purchases from the consent order firms be presumed to have suffered no injury. They would therefore be

² Under the terms of the Busler consent order, the firm agreed to pay \$10,000 directly to its reseller customers. The amount Busler paid into the DOE escrow account is attributable only to retail sales of motor gasoline from Busler's company-owned gasoline stations. Accordingly, Busler's reseller customers will not be eligible for refunds in this proceeding.

³ Some of the motor gasoline sales covered by the Consent Orders occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979.

⁴ The ERA audit files do not list the volumes of motor gasoline sold by Busler, Eastern, FKG, and Indian during the entire consent order periods applicable in each case. We have therefore extrapolated sales figures for these firms from the available audit data.

⁵ The General Consent Order calls for General to remit \$126,081 plus interest to the DOE in 24 monthly installments from September 30, 1981 through August 30, 1983, and the Indian Consent Order calls for Indian to remit \$145,583 including interest to the DOE in 36 monthly installments from July 1, 1979 through June 1, 1982. We have been informed by the ERA, however, that as of January 31, 1985, only \$37,158.88 had been paid into the General consent order escrow account and only \$28,307.79 has been paid into the Indian consent order escrow account. If General and Indian do not remit the entire consent order amounts before the processing of refund applications in this proceeding, refunds to the firm's customers will be reduced proportionately. For this reason, no refunds will be

have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchases is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. Since the per gallon refund amount is fairly low in the cases of Busler, Eastern, FKG and General, and the time period of the consent order was quite distant in the case of Indian, we believe that the establishment of a presumption of injury for all claims of \$5,000 or less is reasonable in the present proceeding.⁷ See *id.*; *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges

on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See *Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of motor gasoline purchased from one of the consent order firms need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We further propose to establish a minimum amount of \$15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 C.F.R. § 205.286(b).

Refund applications in these proceedings should not be filed until issuance of a final Decision and Order. Detailed procedures for filing

applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the *Federal Register*, copies will be provided to the consent order firms' customers whose names and addresses we have obtained from the ERA audit files. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where the consent order firms conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that the refund amounts remitted to the Department of Energy by the consent order firms listed in Appendix A to this Decision and Order will be distributed in accordance with the foregoing Decision.

Appendix A

Name of firm	Consent order period	Consent order amount	Volumetric amount
Busler Enterprises, 401 Diamond Ave., Evansville, IN 47711	1/1/79-1/28/81	\$72,591.90	\$0.002522
Eastern Petroleum Corp., 33 Hudson St., Annapolis, MD 21401	8/1/79-2/29/80	\$28,104.82	0.009508
FKG Oil Co., 720 West Main, P.O. Box 122, Belleville, IL 62220	4/1/79-8/31/79	\$74,926.46	0.007720
General Equities, Inc., Main St., Kensington, CT 06037	4/1/79-8/31/79	\$28,081.00	0.006090
Indian Oil Co., 114 Main St., Madison, ME	11/1/73-7/1/74	\$145,583.00	0.03615

⁷ Includes interest that accrued on the consent order amount prior to payment to the DOE.

[FR Doc.85-9783-4 Filed 4-22-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearing and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearing and Appeals of the Department of Energy announces the procedures for disbursement of \$50,594.11 obtained as a result of a consent order which the DOE entered into with McCarty Oil Company, Inc., a reseller of petroleum products located in Wapakoneta, Ohio, and \$46,000 obtained as a result of a consent order which the DOE entered into with Nielsen Oil and Propane, Inc., a reseller of petroleum products located in West Point, Nebraska.

DATE AND ADDRESS: Applications for refund of a portion of the McCarty or Nielsen consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the *Federal Register*. All applications should refer to Case Number HEF-0126 (McCarty) or HEF-0136 (Nielsen) and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the predecisional regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to consent orders entered into by the DOE and McCarty Oil Company, Inc., and the

ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

[Those customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97. See *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claims are based.

⁷ Any reseller whose potential refund exceeds the threshold level may elect to apply for a refund based on the threshold amount.

DOE and Nielsen Oil and Propane, Inc., which settled possible pricing violations in the firms' sales of refined petroleum products to their customers during the respective consent order periods. The McCarty consent orders covers the period between April 1, 1979, and September 30, 1979. The Nielsen consent order covers the period from March 1, 1979, through December 31, 1979.

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of the escrow accounts funded by McCarty and Nielsen pursuant to the consent orders. The DOE has decided that a portion of the McCarty consent order funds should be distributed to 22 wholesale purchasers which DOE's audit indicated may have been overcharged, after each has filed an application for refund. The DOE has also decided that a portion of the Nielsen consent order funds should be distributed to 13 first purchasers who may have been overcharged, after each has filed an application for refund. These purchasers were identified by DOE audits and allotted funds based on findings and presumption of injury which the DOE has used in past proceedings. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the McCarty and Nielsen consent order funds was issued on January 7, 1985. 50 FR 4,752 (February 1, 1985).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased petroleum products from McCarty and Nielsen during the respective audit periods. Applications will be accepted provided they are filed in duplicate and are received no later than 90 days after publication of this Decision and Order in the *Federal Register*. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: April 15, 1985.

George B. Breznay,

Director Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: McCarty Oil Company, Inc., and Nielsen Oil and Propane, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0128, and HEF-0136.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with McCarty Oil Company, Inc. (McCarty) and Nielsen Oil and Propane, Inc. (Nielsen).

I. Background

Both McCarty and Nielsen are "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR § 212.31. McCarty's main office is in Wapakoneta, Ohio. Nielsen is located in West Point, Nebraska. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The McCarty consent order covers the period April 1, 1979, through September 30, 1979. A DOE audit alleged that during that period, the firm committed possible pricing violations amounting to \$78,140.53 with respect to its sales of motor gasoline. In order to settle all claims and disputes between McCarty and the DOE regarding the firm's sales of motor gasoline during the audit period, McCarty and the DOE entered into a consent order on February 24, 1981. Under the terms of the consent order, McCarty agreed to make refunds amounting to \$53,000 (including interest). Separate processes were established by which McCarty would refund money to injured parties. First, \$2,405.89, representing alleged overcharges on sales to end users, was to be refunded directly to those purchasers. In addition, \$50,594.11, representing alleged overcharges with respect to sales of motor gasoline to certain wholesale purchasers, was to be deposited by McCarty into an interest-bearing escrow

account for ultimate distribution by the DOE. McCarty deposited the \$50,594.11 over an 18-month period ending February 24, 1983.¹

The Nielsen consent order covers the period from March 1, 1979, through December 31, 1979. The DOE audit of Nielsen revealed possible pricing violations amounting to \$127,177.22 during the audit period. In order to settle all claims and disputes regarding Nielsen's sales of motor gasoline and propane during the audit period, on August 31, 1981, Nielsen and the DOE entered into a consent order. Under the terms of the consent order, Nielsen was to deposit \$46,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Nielsen remitted this sum on April 22, 1981, in advance of the effective date of the consent order.²

On January 7, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties who were injured by McCarty's alleged violations in the sale of motor gasoline or by Nielsen's alleged violations in the sale of motor gasoline and propane during the respective consent order periods. 50 FR 4752 (February 1, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of actual or alleged violations of the DOE regulations. In order to effect restitution in these proceedings, we tentatively determined to rely in part on the information contained in ERA's audit files. We observed that our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. See, e.g., *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We also noted that under such circumstances, a more precise determination with respect to the identities of the allegedly overcharged first purchasers was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audits who may have been injured by McCarty's or Nielsen's pricing practices during the audit periods who would therefore be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers

¹ As of February 28, 1985, the McCarty escrow account contained \$66,789.07, including accrued interest.

² As of January 31, 1985, the Nielsen escrow account contained \$70,529.85, including accrued interest.

could establish a refund claim were also proposed.

A copy of the PD&O was published in the Federal Register and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file for whom we had an address. Copies were also sent to various service station dealers associations. Five of McCarty's customers and three of Nielsen's submitted comments concerning the proposed refund procedures.² Six of these firms expressed support for those procedures. We will address the comments of the other two below.

In addition, comments were submitted on behalf of the State of Ohio concerning the small-claims presumption (*see infra*) and the distribution of residual funds. We will address the comments on the small-claims presumption below. However, we will not address Ohio's other comments at this time. The purpose of this Decision and Order is the establishment of procedures to be used for filing and processing claims in the first stage of the McCarty and Nielsen refund proceedings. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address Ohio's comments regarding residual funds at this time.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those person who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion refunds, *see Office of Enforcement*, 8 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

In the PD&O, we stated that during the DOE's audit of McCarty, 37 first purchasers were identified as having allegedly been overcharged and in the

audit of Nielsen, 44 first purchasers were so identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of possible refund recipients or the appropriate refund for a particular firm. *See Armstrong & Associates/City of San Antonio*, 10 DOE ¶ 85,059 at 88,259 (1983). Nevertheless, as we stated in *Marion*, the information contained in the audit files "can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." *Marion*, 12 DOE at 88,031. In previous cases of this type, we have apportioned the funds in the escrow account among the customers identified by the audit or their downstream customers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audits, along with the share of the settlement allotted to each by ERA, are listed in Appendices A-1, A-2, A-3, B-1, B-2, and B-3.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we will also adopt certain presumptions in order to determine the level of a purchaser's injury and thereby distribute the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions and findings we will adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we will adopt rebuttable presumptions that claimants seeking small refunds were injured by McCarty's and Nielsen's pricing practices and that spot purchasers who were resellers were not

injured. In addition, we find that end users suffered injury.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution were the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under this small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. These cases merit the same approach.

Several factors determine the specific value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this instance, where the refund amounts are fairly low, and the early months of the consent order periods are quite distant, \$5,000 is a reasonable value for the threshold.⁴ *See Texas Oil & Gas*

²McCarty customers submitting comments were Hancock Landmark, Inc., Mid-Wood, Inc., Paulding Landmark, Inc., Slattery Oil Company, Inc. (Slattery), and Watkins Oil Company, Inc. (Watkins). Nielsen customers who submitted comments were Gas 'n' Shop, Bob Martens Oil Company, Inc., and Rileway Service.

⁴Resellers who claim a refund in excess of \$5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the \$5,000 threshold, without being required to submit evidence of injury. Resellers

Corp.; Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco), and cases cited therein. Twenty of McCarty's customers and 14 of Nielsen's are eligible for refunds below the threshold.

In its comments on the proposed refund procedures, Ohio suggests that because of the comparatively small size of the McCarty escrow account, the small-claims presumption should not apply to large resellers. Ohio does not explain its logic and we cannot see any reason why the fact that an escrow account is small should work against potential claimants. In addition, it should be noted that the rationale behind the presumption applies to small claims, not small firms.

In its comments, Slattery requests that we permit it to receive the full \$6,405.85 allotted to it without requiring the firm to prove its injury. The firm bases its request on the fact that it is located in an isolated part of Ohio and lacked alternative suppliers. We will defer a final determination on the exact amount of refund Slattery should receive until we have analyzed the firm's Application for Refund. However, we note that in previous cases where an applicant faced circumstances similar to Slattery's we have granted the applicant the full refund allotted to it by the DOE audit. See *Reinhard Distributors, Inc.*, 12 DOE ¶ 85,137 (1984).

Any firm potentially eligible for a refund in excess of \$5,000 may receive the full amount allotted to it if it can show that it was injured by either McCarty's or Nielsen's alleged overcharges. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.

Watkins Oil Company, one of McCarty's spot-purchaser customers, suggested that we discard our presumption that spot purchasers suffered no injury. Watkins states that it had to buy from McCarty because of limits imposed by its regular supplier and the firm submitted copies of invoices showing it paid over 13 cents per gallon more to McCarty than it paid to its other supplier. The firm thus concludes that the spot purchaser presumption is inapplicable to it and

extrapolates from this to argue that the presumption is invalid for others as well. Watkins's submission is insufficient to cause us to withdraw the spot purchaser presumption. It is entirely possible that Watkins was injured; we will reserve judgment on this question until we have analyzed the firm's refund application. However, even if Watkins suffered injury, we still believe that most spot purchasers did not. In the PD&O, we explained that we have found that spot purchasers generally buy fuel only when they believe they can pass the full costs through to their own customers. See *Vickers*, 8 DOE at 85,396-97. For example, in *Tenneco Oil Co./J.O. Cook, Inc.*, 9 DOE ¶ 82,581 (1982), the applicant stated: "We brokered all of this gasoline at 1/2 cent to 1 cent above our cost. . . . We did not pickup the gasoline and sell it ourselves at retail." *Id.* at 85,427. In many other cases, spot purchasers have failed to produce evidence demonstrating injury when given the opportunity. See, e.g., *Standard Oil Co. (Indiana)/Cities Service Co.*, 12 DOE ¶ 85,114 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Gulf Oil Corp.*, 12 DOE ¶ 85,092 (1984). Our experience has thus shown us that, in general, spot purchasers are not likely to have been injured by alleged overcharges. This presumption is rebuttable, however. If Watkins, or any other spot purchaser, can prove injury, we will approve its application for refund.

There are a variety of methods by which a firm can show that it was injured. One method is described above, in the section relating to larger purchasers. A firm such as Watkins, which did not calculate its cost banks as required by 10 CFR § 212.87, could show that such banks probably existed by showing that its profit margin was lowered as a result of its purchase, or by some other method. See *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 at 88,577 (1985). We will determine whether the available data provide adequate support for a particular refund application on a case-by-case basis.

As noted above, we find that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decision on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods

and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. See *Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (PVM); see also *Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. End users of Nielsen petroleum products will therefore be required to document only their purchase volumes from Nielsen to make sufficient showing that they were injured by the alleged overcharges.⁵

As stated in the PD&O, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, e.g., public utilities, any overcharges incurred as a result of McCarty's or Nielsen's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we will add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. See, e.g., *Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least \$15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing smaller claims outweighs the benefits of restitution. See, e.g., *Uban Oil Co.*, 9 DOE at 85,225. See also 10 CFR 205.286(b). The same principal applies here.

⁵ McCarty has already made direct refunds to its customers who were end users. Those firms are therefore not eligible to apply for additional refunds in this proceeding, and the finding regarding end users is thus not relevant to first purchasers of McCarty products. However, downstream purchasers whose suppliers did not absorb the alleged overcharges will be covered by this finding as well as by all other presumptions.

potentially eligible for greater refunds may choose to limit their claims to \$5,000 in order to avoid having to prove their injury. See *Vickers*, 8 DOE at 85,396. See also *Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

Finally, as we indicated in the PD&O, if additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after analyzing all appropriate claims.*

III. Applications for Refund.

We have determined that by using the procedures described above, we can distribute the McCarty consent order funds and the Nielsen consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from McCarty between April 1, 1979, and September 30, 1979, or motor gasoline and/or propane from Nielsen between March 1, 1979, and December 31, 1979. As we proposed, the consent order funds will be distributed to those firms listed in Appendices A-1, A-2, B-1, and B-2 who file applications for refund, providing they make any necessary demonstrations of injury. Spot purchasers listed in Appendices A-3 and B-3, will receive refunds if they can rebut the spot-purchaser presumption and show that they were injured.⁷ We will also grant refunds to any other eligible customers of McCarty or Nielsen which applies for a refund.

No valid addresses are available for those firms listed in Appendix A-2; copies of the PD&O sent to them were returned by the Post Office. There are also no addresses available for those firms listed in Appendix B-2. As a result of our initial efforts, we were able to locate three firms for which we had not had addresses. In an attempt to locate the remaining firms, we will provide McCarty, Nielsen, and various petroleum dealers associations in Iowa, Kansas, Nebraska, and Ohio with copies of this decision, in addition to publishing notice in the *Federal Register*. We will accept information regarding the identity and present location of these firms for a period of 90 days from the date of publication of this Decision and Order in the *Federal Register*.⁸

In order to receive a refund, each claimant will be required to submit either a schedule of its monthly purchases of gasoline from McCarty or gasoline and/or propane from Nielsen or a statement verifying that it purchased petroleum products from McCarty or from Nielsen, and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits underlying these proceedings. Purchasers not identified by the ERA audits will be required to provide specific information concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d).

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the *Federal Register*. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my

reserve any funds allocated to that firm for distribution in a subsequent proceeding.

knowledge and belief." See 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. Applications from McCarty customers should refer to Case No. HEF-0126; applications from Nielsen customers should refer to Case No. HEF-0136. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by McCarty Oil Company pursuant to the consent order executed on February 24, 1981, and by Nielsen Oil and Propane, Inc. pursuant to the consent order executed on August 31, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the *Federal Register*.

Dated: April 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A-1—MCCARTY FIRST PURCHASERS

Name of firm	Share of settlement ¹
Agri-Urban, 618 South U.S. 42, Lebanon, OH 45038	\$298.19
Augsiaze Landmark, Wape Theatre Building, Wapakoneta, OH 45895	1,027.77
Butler Landmark, P.O. Box 626, Hamilton, OH 45012	75.38
C & D Oil, Inc., Paulding, OH 45879	504.60
Darke Landmark, Inc., 619 Sater, Greenville, OH 45331	504.86
Garner's Truck Service, P.O. Box 96, Jeffersonville, OH 43128	243.65
Hancock Landmark, 8566 Company Road No. 236, Findlay, OH 45840	480.00
Hertz Corp., 660 Madison Ave., New York, NY 10021	13,277.80
King-Kwik, 3870 Virginia Ave., Cincinnati, OH 45227	462.23
Lin-mor, 110 Ash St., Lindsey, OH 43442	4,926.83
May's Oil Co., 113 S. College St., Piqua, OH 45356	135.14
Mercer Landmark, 715 West Logan St., Celina, OH 45822	912.22
Mid-wood Landmark, P.O. Box 799, Bowling Green, OH 43402	297.15
Minster Farmers Co-op, 292 Fourth St., Minster, OH 45865	1,389.23
Minster Oil Co., 165 West 4th St., Minster, OH 45865	1,743.77
Ottawa Oil Co., 105 East 4th St., Ottawa, OH 45875	3,091.76
Ralph's Sunoco, 2001 Needmore Rd., Dayton, OH 45415	1,176.70
Slatery Oil Co., 305 Delance Ave., Hicksville, OH 43526	6,405.85
Wapak Truck Plaza, RRI, Wapakoneta, OH 45895	2,168.39

¹ Not including accrued interest.

*Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they are entitled to refunds larger than those indicated in the Appendices.

⁷The share of the McCarty escrow fund allocated to each firm listed in Appendices A-1, A-2, and A-3 represents 68.55 percent of the amount each was allegedly overcharged. The share of the Nielsen escrow fund allocated to each firm listed in Appendices B-1, B-2, and B-3 represents 36.17 percent of amount each was allegedly overcharged. These figures are consistent with the terms of the McCarty and Nielsen consent orders, which settled for 68.55 and 36.17 percent, respectively, of the total amount of overcharges alleged in the respective audits.

⁸If we are unable to locate any firms listed in either Appendix A-2 or Appendix B-2, we will

APPENDIX A-2—MCCARTY FIRST PURCHASERS, NO VALID ADDRESS AVAILABLE

Name of firm and last known address	Share of settlement ¹
Dayton South Truck Stops, Franklin, OH 45005	\$2,399.26
Interpoint Corp., 8 South Wabash Ave., Chicago, IL 60603	2,896.85
Union 76 Tourist Stop (Dayco), 235 South Main St., Monroe, OH 45050	1,009.36

¹ Not including accrued interest.

APPENDIX A-3—MCCARTY SPOT PURCHASERS

Name of firm	Share of settlement ¹
Auto Truck Rental, 401 E. 5th St., Dayton, OH 45402	\$257.06
Central Transport, 34200 Mound Rd., Sterling Heights, MI 48077	440.13
Champaign County Landmark, 304 Bloomfield Ave., Urbana, OH 43078	164.43
Clark Landmark, 821 N. Belmont St., Springfield, OH 45503	237.72
Clinton Co.	230.13
G & L Oil Co., 80 Hopewell St., Triffin, OH 44883	191.72
Highland Landmark, P.O. Box 70, Hillsboro, OH 45133	108.51
Interstate Truck Stops, c/o Claire Fisher, 1333 Mercer Rd., Jerome, MI 49249	424.58
Madison County Landmark, 254 W. High St., London, OH 43140	155.59
Montgomery Landmark	79.22
Paulding Landmark, P.O. Box 243, Paulding, OH 45879	367.43
Watkins Oil Co., P.O. Box 195, Hillsdale, MI 49242	1,478.66
C. Wright Truck Stop, c/o Barry Groat-house, 2420 State Route 703 East Celina, OH 45822	266.93
XCEL Products, 14th Floor, 2900 North Loop West, Houston, TX 77092	569.10

¹ Not including accrued interest.

APPENDIX B-1—NIELSEN FIRST PURCHASERS

Name of firm	Share of settlement ¹
Al's Place, Crofton, NE 68730	\$386.22
Barger Oil, 605 South 13th, Tekamah, NE 68061	714.86
Casey's General Store, P.O. Box 3288, Des Moines, IA 50316	10,959.40
Derby Refining Co., 502 Broadway, Yankton, SD 57078	35.49
Downing Oil, Post Office Box 1006, Norfolk, NE 68701	239.42
Fisca Oil, 8242 Maple St., Omaha, NE 68134	10,880.49
Gas 'N' Shop, Post Office Box 81463, Lincoln, NE 68501	5,117.51
Jen Haket, Haket Oil, Weston, NE 68070	22.17
Highway Oil, 12th Floor, 1st National Bldg., Topeka, KS 66603	5,470.89
Kratke Oil, Wakefield, NE 68784	1,063.46
Kookie's Kwik, Oakland, NE 68045	5.01
Lueders Oil, Wisner, NE 68791	190.15
R.J. Martens, Box 342, Seward, NE 68434	147.69
Neska Oil, 4th and Whitney, Pender, NE 68647	1,081.38
David Scharff, Rite-way Service, Route 3, Box 87, Columbus, NE 68601	2,121.12
Shortstop East, 235 West 19th St., Fremont, NE 68025	2,902.86
Soil Oil Co., Bancroft, NE 68004	1,061.28
Smidt Standard, West Point, NE 68768	11.84

¹ Not including accrued interest.² As noted in the body of this Proposed Decision, we do not intend to grant claims for less than \$15.00.

Appendix B-2—NIELSEN FIRST PURCHASERS, NO ADDRESS AVAILABLE

Name of firm	Share of settlement ¹
Givns	\$617.00
Kerr-McGee (retail station)	278.60
Pokorny Oil	355.14
Schulzer Oil	342.12

¹ Not including accrued interest.

APPENDIX B-3—NIELSEN SPOT PURCHASERS

Name of firm	Share of settlement ¹
J. Adams, 1500 East Front St., Fremont, NE 68025	\$4.89
Bingo Oil	56.60
Blackman Standard	159.52
Blair Mini-Market	198.57
Crest Oil, 1545 Cornhusker Highway, Lincoln, NE 68521	157.46
Chadwick's Self-Service, Waver, NE 68791	78.99
Fina Oil	42.17
Farmers Co-op	96.70
Jones Oil	47.34
Kersten & Lee	202.41
Konecky, Cedar Bluffs, NE 68015	109.48
Liberty Oil	42.74
Lincoln Oil, Box 82231, Lincoln, NE 68500	276.19
M & M Service	44.43
Merchant Oil	18.46
7-11, Store No. 104	26.48
7-11, Store No. 107	76.55
7-11, Store No. 118, Omaha, NE	41.01
Stubbendick Oil	104.75
Sapp Brothers, P.O. Box 37446, Omaha NE 68137	178.92
E.T. Thompson, Blair, NE 68008	39.06
Ziegler Oil, Monroe, NE 68647	3.07

¹ Not including accrued interest.

[FR Doc. 85-9785 Filed 4-22-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

General Rate Increase of Trans-Pacific Freight Conference (Hong Kong) and New York Freight Bureau (Hong Kong); Filing of Petition for Investigation

Notice is given that a petition has been filed by counsel for the Hong Kong Shippers' Council for an investigation pursuant to section 11 of the Shipping Act of 1984 (the Act), regarding general rate increases implemented by the Trans-Pacific Freight Conference (Hong Kong) and the New York Freight Bureau (Hong Kong) on January 1, 1985. Petitioner is asking the Commission to both determine that the increases violate the general standards of section 6(g) of the Act and seek to enjoin further implementation of the increases pursuant to section 6(h) of the Act.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101.

Interested persons may submit replies to the petition to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 20, 1985. An

original and fifteen copies of such replies shall be submitted. A copy of such replies shall also be served on filing counsel: Austin P. Olney, LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-9732 Filed 4-22-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 17, 1985

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for OMB approval to extend with revision the following reports:

1. Report title: Reports of Condition and Income

Agency form number: FFIEC 031-034

OMB Docket number: 7100-0036

Frequency: Quarterly

Reporters: State member banks

Small businesses are affected

General description of report

This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

State member banks are required to file detailed schedule of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revisions to the June 1985 Call Report consist of: (1) The addition of items on intangible assets and mandatory convertible debt to obtain data for use in monitoring compliance with capital adequacy guidelines; (2) obtaining nonaccrual and renegotiated "troubled" debt data on agricultural loans from the smaller institutions; (3) merging memo item 2 on the Report of Income with item 1.d. on the Income Statement of the —034 report; (4) the elimination of Part III on Schedule J; and (5) the addition of a memo item on Schedule RC-L on interest rate swap.

Board of Governors of the Federal Reserve System, April 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9691 Filed 4-22-85; 8:45 am]

BILLING CODE 6210-01-M

Citizens Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments

regarding each of these applications must be received not later than May 15, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens Financial Services, Inc.*, Greensboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Union Bank, Greensboro, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FIRSTBANK CORP.*, Alma, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Alma, Alma, Michigan.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Liberty Bancshares, Inc.*, St. Paul, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Janada Bancshares, Inc., St. Paul, Minnesota and directly acquiring 100 percent of the nonvoting preferred stock of Liberty State Bank, St. Paul, Minnesota.

Board of Governors of the Federal Reserve System, April 17, 1985.

James McAfee,

Associate Secretary of the Board

[FR Doc. 85-9692 Filed 4-22-85; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp.; Proposal To Engage in the Execution and Clearance of Future Contracts on a Municipal Bond Index on Major Commodity Exchanges, and the Provision of Advisory Services With Respect to Futures Contracts and Options on Futures Contracts in Which It Trades

The Chase Manhattan Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage in the execution and clearance of futures contracts on a municipal bond index on major commodity exchanges, and the provision of advisory services with respect to futures contracts and options on futures contracts in which it trades. These activities would be performed through the applicant's futures commission merchant subsidiary, Chase Manhattan Futures Corporation, through

offices in New York, New York, Miami, Florida, Los Angeles, California, Chicago, Illinois, Houston, Texas, Philadelphia, Pennsylvania, Boston, Massachusetts, San Francisco, California, Singapore, Malaysia, and London, England, serving customers in the United States and abroad.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined by order that activities similar to those proposed by the applicant are closely related to banking. *Bankers Trust New York Corporation*, December 21, 1984; 71 Federal Reserve Bulletin 111 (1985). Applicant believes that its proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto.

Interested persons may express their views on whether the proposed activities of executing and clearing futures contracts on a municipal bond index and of providing advisory services thereon are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 15, 1985.

Board of Governors of the Federal Reserve System, April 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9893 Filed 4-22-85; 8:45 am]

BILLING CODE 9210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Mental Health Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of May 1985:

National Advisory Mental Health Council

May 13-15; 10:30 a.m.

May 13—National Institutes of Health, Building #1—Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20205

May 14-15—Parklawn Building, Conference Rooms I and J, 5600 Fishers Lane, Rockville, Maryland 20857

Open—May 13; 10:30 a.m.—5:00 p.m.

Closed—Otherwise

Contact: Helen W. Garrett, Committee Management Officer, Parklawn Building, Room 17C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: On May 13, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for Federal assistance and will not be open to the public in accordance with the determination by

the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

National Advisory Council on Drug Abuse

May 14-15; 9:00 a.m., National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20205

Open—May 14; 9:00 a.m.—12 noon

May 15; 9:00 a.m.—5:00 p.m.

Closed—Otherwise

Contact: Sheila Gardner, Parklawn Building, Room 10A-37, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6720

Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: From 9:00 a.m.—12 noon, May 14, and from 9:00 a.m.—5:00 p.m., May 15, the meeting will be open for discussion of administrative announcements, program development and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIMH

May 30-June 1; 9:00 a.m., National Institutes of Health, Building 36, Conference Room 1B-07, 9000 Rockville Pike, Bethesda, Maryland 20205

Open—May 30; 9:00-9:15 a.m.

Closed—Otherwise

Contact: Frederick K. Goodwin, National Institute of Mental Health, 9000 Rockville Pike, Building 36, Conference Room 1B-07, Bethesda, Maryland 20205, (301) 496-3501

Purpose: The Board provides expert advice to the Director, NIMH, on the mental health intramural research

program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: On May 30, the Board will meet for approximately 15 minutes for a report by the Director of Intramural Research, NIMH, on recent administrative developments. The remainder of the 2½ day session will be devoted to a review of the intramural research projects from the Laboratory of Cerebral Metabolism and the Laboratory of Neurophysiology, and the evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: April 17, 1985.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-9727 Filed 4-22-85; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Boston District Office, chaired by Frederick R. Carlson, District Director. The topics to be discussed are Health Frauds and Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Tuesday, April 23, 1985, 9:30 a.m. to 12 m.

ADDRESS: Conference Rm., Deeds and Probate Bldg. (Lower Level), Railroad Ave., Barnstable, MA 02630.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, 585 Commercial St., Boston, MA 02109, 617-223-5857.

Kansas City District Office, chaired by James A. Adamson, District Director. The topic to be discussed is Women's Health Issues.

DATE: Thursday, April 25, 1985, 9:30 a.m. to 12 m.

ADDRESS: Federal Office Bldg., Rm. 147, 601 East 12th St., Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Julia S. Hewgley, Consumer Affairs Officer, Food and Drug Administration, 1009 Cherry St., Kansas City, MO 64106, 816-374-3817.

Los Angeles District Office, chaired by Abraham I. Kleks, District Director. The topics to be discussed are Women's Health Issues, Switching of Prescription Drugs to Over-the-Counter Drugs, and Health Frauds.

DATE: Monday, April 29, 1985, 1 p.m. to 3 p.m.

ADDRESS: Cooperative Extension Service, 4341 East Broadway, Phoenix, AZ 85040.

FOR FURTHER INFORMATION CONTACT: Irene Gomez Caro, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213-688-4395.

Cincinnati District Office, chaired by James C. Simmons, District Director. The topics to be discussed are: (1) Switching of Prescription Drugs to Over-the-Counter Drugs, (2) Exclusivity of Labeling Terms for Over-the-Counter Drugs, (3) Use of Antibiotics at Subtherapeutic Levels in Animal Feeds, (4) Health Claims on Food Packages, and (5) Health Frauds.

DATE: Tuesday, May 7, 1985, 1 p.m. to 3 p.m.

ADDRESS: 85 Marconi Blvd., Rm. 446, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Ruth E. Weisheit, Consumer Affairs Officer, Food and Drug Administration, 601 Rockwell Ave., Rm. 463, Cleveland, OH 44114-1699, 216-522-4844.

Cincinnati District Office, chaired by James C. Simmons, District Director. The topics to be discussed are: (1) Switching of Prescription Drugs to Over-the-Counter Drugs, (2) Exclusivity of Labeling Terms for Over-the-Counter Drugs, (3) Use of Antibiotics at Subtherapeutic Levels in Animal Feeds, (4) Health Claims on Food Packages, and (5) Health Frauds.

DATE: Thursday, May 9, 1985, 10 a.m. to 12 m.

ADDRESS: 550 Main St., Federal Office Bldg., Rm. 4022, Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Ruth E. Weisheit, Consumer Affairs Officer, Food and Drug Administration, 602 Rockwell Ave., Rm. 463, Cleveland, OH 44114-1699, 216-522-4844.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decision on vital issues.

Dated: April 16, 1985.

Mervin H. Shumate,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 85-9686 Filed 4-22-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1985:

Name: National Advisory Council on Nurse Training

Date and Time: May 13-15, 1985, 10:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on May 13, 10:00 a.m.-12:00 noon
Open on May 14, 2:00 p.m.-2:30 p.m.
Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of Title XXVII, National Health Service Corps, Health Professions Education, Nurse Training Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRSA.

Agenda: Agenda items for the May 13, open portion of the meeting will cover announcements; consideration of minutes of the previous meeting; reports by the Director, Bureau of Health Professions, the Financial Management Officer, BHPR, the Director, Division of Nursing, and staff reports. The May 14

open portion of the meeting will be for a report by the Administrator, HRSA. The meeting will be closed to the public on May 13 at 12:00 noon for the remainder of the meeting, except from 2:00 p.m. to 2:30 p.m. on May 14, for the review of grant applications for advanced nurse training grants, nurse practitioner grants, special project grants, national research service awards, and research project grants. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5, U.S. Code and the Determination by the Administrator, Health Resources and Services Administration, pursuant to section 10(d) of Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should write to or contact Dr. Mary S. Hill, Bureau of Health Professions, Health Resources and Services Administration, Room 5C-04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6193.

Agenda items are subject to change as priorities dictate.

Dated: April 18, 1985.

Jackie E. Baum,
*Advisory Committee Management Officer,
HRSA.*

[FR Doc. 85-9726 Filed 4-22-85; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service; Health Professions Recruitment Program for Indians; Announcement of Competitive Grant Applications

The Indian Health Service (IHS), Health Resources and Services Administration, announces that competitive applications are now being accepted for the above-referenced grant program established by section 102 of Indian Health Manpower (Title I), Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612). There will be only one funding cycle during fiscal year 1985.

Section 102 of the Act authorizes grants to identify, recruit, and assist American Indians and Alaska Natives, hereafter referred to as Indians, into medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, and allied health professions. The Secretary of Health and Human Services, acting through the IHS, determines which of these professions will be given priority consideration in order to meet the needs of Indians for health services.

The regulations governing this grants program are set forth in 42 CFR Part 36,

Subdivision J-2. This program is described at § 13.970 in the Catalog of the Federal Domestic Assistance.

Scope of this program announcement: This announcement provides information on the general program purposes and objectives, programmatic priority, eligibility requirements, funding availability, and application procedures for the Health Professions Recruitment Program for Indians for fiscal year 1985.

A. General Program Purposes: To augment the inadequate number of health professionals serving Indians and remove the multiple barriers to the entrance of health professionals into the IHS and private practice among Indians.

B. Programmatic Priority: Based on the projected manpower needs of the IHS, only organizations which can recruit and train for Masters of Public Health in various specializations will be considered for FY 85 funding.

C. Program Objectives:

1. (a) To offer a Masters level program in Public Health or Hospital Administration for Indian Health Service Indian employees who are working full-time and therefore can only participate in on-campus activities for a limited amount of time (maximum of 60 days per calendar year). Tuition, fees, books, and other educational costs are not a part of this grant and will be funded separately for those students approved by the Indian Health Service.

(b) To identify Indians with a potential for education or training in Public Health or Hospital Administration (Masters level) and to encourage and assist them to enroll in such programs.

Each grantee will be required to develop the necessary student support systems to help to ensure that students successfully complete their academic training. Each grantee is required to develop a "Retention Program" to support the students participating in those programs funded under objectives 1(a) and/or 1(b).

2. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in a health professions school.

3. To develop a study guide for health professional students that will provide guidance on effective note-taking, time management, test preparation, test taking, and study organization techniques and suggestions.

Each proposal must respond to either objective 1(a) or 1(b) or both. However, priority consideration will be given to those applicants that respond to objective 1(a). Additionally, within the same application each grantee must respond to either objective 2 or 3. In order to avoid duplication of effort by

the funded projects, the grantor will be responsible for coordinating an initial planning meeting of the funded projects that have chosen the same secondary objective (e.g., 2 or 3) and to negotiate redistribution and coordination of efforts.

D. Eligibility Requirements: In accordance with regulations, any Indian tribe, tribal organization, urban Indian organization, Indian health organization, or any public or other non-profit private health or educational entity may apply; however, priority will be given to public or non-profit educational entities which offer accredited Masters of Public Health programs.

E. Fund Availability: Approximately \$220,000 is available in fiscal year 1985 during this cycle for award of recruitment grants under section 102 with approximately four projects to be funded.

F. Type of Program Activities Considered for Support: Grant programs developed to locate and recruit students with potential for Public Health training and to support Indian students funded by the IHS Scholarship Programs and other funding sources. Support services may include providing career counseling and academic advice; assisting students to locate financial aid; and assisting with the determination of need for and location of tutorial services.

G. Application process:

1. An IHS Recruitment Grant Application Kit may be obtained from the Grants and Contracts Management Branch, Room 6A-29, 5600 Fishers Lane, Rockville, Maryland 20857.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including those referred to in 42 CFR Part 36, Subdivision J-2.

3. An original and four copies of the completed Grants Application must be submitted, with all required documents, to arrive in the Grants and Contracts and Management Branch by the closing date, May 31, 1985. Applications received after the announced closing date will be returned to the applicant and will not be considered for funding. (See Part H of this announcement for deadline requirements.)

4. Each application will be reviewed at the Grants and Contracts Management Branch for completeness, accuracy, and eligibility. All acceptable applications will be subject to a competitive review and evaluation in accordance with established objective review procedures.

5. If an application is disapproved or if funds are not available to support all

approved applications, the affected applicants will be so notified by July 31, 1985.

G. Criteria for Review and Evaluation:

1. As stated in 42 CFR Part 36, Subdivision J-2, § 36.313, each application will be evaluated against the following criteria:

The potential effectiveness of the proposed project in carrying out the purposes of Section 102;

The demonstrated capability of the applicant to successfully conduct the project;

The accessibility of the applicant to Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes;

The relation of project objectives to Indian Health manpower's deficiencies;

The soundness of the fiscal plan for assuring effective utilization of grant funds;

The objectives and feasibility of the application.

2. Where program needs justify funding a certain activity for a particular geographic area and several applicants are equally qualified to conduct the activity, preference will be given in awarding grants in the following order of priority: Indian tribes; Tribal organizations; Urban Indian organizations and other Indian Health organizations; and public and non-profit private health and educational entities.

3. The project period for any proposal will not exceed one year. However, annual continuations will be considered if project has performed satisfactorily and the IHS needs still exist.

H. Closing Date for Receipt of Applications: The closing date for receipt of applications under this announcement is May 31, 1985. An application will be considered to have arrived by the closing date if: (1) it is received by the Grants and Contracts Management Branch by 12:00 p.m. (EDT), or (2) it is clearly postmarked at least 2 days prior to the announced closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Kay Carpentier, Grants Management Officer, Grants and Contracts Management Branch, Room 6A-29, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5204, and Pierre A. Colombel, Title I Project Manager, Room 6A-23, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5441.

Dated: April 17, 1985.

Robert Graham,

Administrator Assistant Surgeon General.

[FR Doc. 85-9725 Filed 4-22-85; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, National Institutes of Health, May 10, 1985, Building 31A, Conference Room 11A10, Bethesda, Maryland 20205, from 9:30 a.m. to adjournment.

The meeting will be open to the public on May 10 from 9:30 a.m. to adjournment to discuss program policies and planning for the Biomedical Research Support Grant Program, the Biomedical Research Support Shared Instrumentation Grant Program, and the Minority High School Student Research Apprentice Program. Attendance by the public will be limited to space available.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545, will provide a summary of the meeting and a roster of the Committee members. Dr. Marjorie A. Tingle, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, will furnish substantive program information and will receive any comments pertaining to this announcement.

[Catalog of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health]

Dated: April 16, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85-9681 Filed 4-22-85; 8:45 am]

BILLING CODE 4140-01-M

Clinical Cancer Program Project Review Committee; Amended Meeting

Notice is hereby given of a change in the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, July 25-26, 1985, Building 31, Conference Room 10, National Institutes of Health which was

published in the Federal Register on March 18, (50 FR 10862).

The committee was to have convened at 8:30 a.m. on July 25, but has been changed to 8:30 a.m. on July 26, 1985, Building 31, Conference Room 10.

The meeting will be open to the public from 8:30 a.m. to 10:00 a.m. and will be closed from 10:00 a.m. to adjournment for the review of grant applications.

Dated: April 16, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85-9680 Filed 4-22-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting; Alaska Land Use Council

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, section 1201, paragraph (h), the Alaska Land Use Council will meet at 11:00 a.m. Wednesday, May 15, 1985, in the Council's Conference Room, located at 1689 C Street, Room 107, Anchorage, Alaska.

The agenda will include Council consideration of:

- Long Range Goals and Objectives 1985-90,
- Council Work Program 1985-86,
- The Kenai National Wildlife Refuge Comprehensive Conservation Plan,
- The Becharof National Wildlife Refuge Comprehensive Conservation Plan,
- The Izembek National Wildlife Refuge Comprehensive Conservation Plan,
- The Togiak National Wildlife Refuge Comprehensive Conservation Plan,
- Outfitter/Guide Policy Recommendations,
- Conservation System Unit Management Plan Implementation, Memorandum of Understanding, Gulkana Wild and Scenic River and
- Upland Oil and Gas Leasing Project Group Report.

The Alaska Land Use Council meeting will be preceded by a joint session with the Council's Land Use Advisors Committee beginning at 9:00 a.m., and lasting approximately two hours. The Land Use Advisors Committee will present recommendations to the Council on the 1985-86 Work Program and discuss State/Federal land use planning activities in Alaska. The Council's meeting will immediately follow this joint session.

For further information contact: Alaska Land Use Council, P.O. Box 100120, Anchorage, Alaska 99510, (907-272-3422 or (FTS) 271-5485.

The public is invited to attend.

William P. Horn,

Deputy Under Secretary.

[FR Doc. 85-9731 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Actions on Proposed Powder River Region Coal Lease Exchange; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the following actions concerning the Kerr-McGee I-90 coal lease exchange proposal:

- (1) Preliminary public interest findings,
- (2) Intended offered and selected lands to be exchanged,
- (3) Environmental assessment availability, and
- (4) Intent to hold a public hearing, if requested.

SUMMARY: Federal law authorizes the Secretary of the Interior to exchange unleased federal coal reserves for certain coal leases impacted by the routing and construction of Interstate Highway 90 across the Powder River Basin in Wyoming. Two exchanges involving other companies have been effected pursuant to the law. This action relates to a proposed exchange with Kerr-McGee Coal Corporation which holds leases adjacent to those exchanged previously. The Bureau of Land Management has made a preliminary finding that it would be in the public interest to exchange these Federal coal leases, which are incumbered by Interstate Highway 90, for another Federal coal lease in the Powder River Coal Region. If requested, a public hearing on this exchange proposal will be held in the Gillette Community Recreation Center, 1000 Douglas Highway, Gillette, Wyoming, on May 23, 1985, at 9:00 a.m. An environmental assessment on the exchange proposal is available upon request from the Bureau's Casper District Office.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Wyoming State Office Bureau of Land Management, Cheyenne, Wyoming (307) 772-2571.

SUPPLEMENTAL INFORMATION: On October 30, 1978, Pub. L. 95-554 specifically authorized the Secretary of the Interior to exchange Kerr-McGee's

and others', Federal coal leases that are incumbered by Interstate 90. The Bureau's preliminary findings indicate that it would be in the public interest to issue a new Federal lease to Kerr-McGee Coal Corporation for approximately 79.5 million tons of recoverable coal in the Powder River Basin. The legal description of these selected lands are:

T. 43 N., R. 70 W.,
Sec. 4: E½, E½NW¼;
Sec. 9: E½.

In exchange, Kerr-McGee would relinquish to the Federal government Federal coal lease numbers W-0312311 and W-0313668, which contain approximately 111.7 million tons of recoverable coal in the Powder River Basin. These offered lands were encumbered by the construction of Interstate Highway 90. The legal descriptions of these offered lands are:

T. 50 N., R. 71 W.,
Sec. 20: NW¼SW¼, S¼SW¼, S¼SE¼;
Sec. 21: SE¼SW¼, NE¼SE¼, SW¼SE¼;
Sec. 22: NW¼SW¼;
Sec. 27: W¼SW¼;
Sec. 28: W¼NE¼, NE¼NW¼, S¼NW¼;
Sec. 29: NE¼, S¼;
Sec. 33: NW¼NW¼;
Sec. 34: NW¼NW¼.

According to the economic evaluation findings, the selected lands have a net present value that is approximately equal to the offered lands. More specifically, the economic evaluation determines the net present value of the offering to be approximately 12.7% greater than the net present value of the selection. This determination is the basis for demonstrating that the leases to be exchanged are within the equal value constraints for coal lease exchanges. Since the involved parcels are of approximate equal value, no additional compensations would occur.

Preliminary findings have been made that the proposed exchange is in the public interest. The findings are that the action would:

- (1) Comply with the intent of Pub. L. (95-554 and thereby resolve an Interstate Highway 90 incumbrance which has persisted for over 10 years.
- (2) Enable the public to gain royalties from the selected lands sooner than royalties could be gained from the offered lands.
- (3) Promote Federal coal development by expanding the needed reserve base for an active coal-producing mine.
- (4) Be done in a manner which would not significantly impact the local and regional environment.
- (5) Help assure the continuation of local tax base, employment, and infrastructure, and

(6) Continue to assure adequate competition for the Thundercloud Tract, which is under consideration for future Powder River Regional competitive lease sale. The proposed exchange would not affect competition for the Thundercloud Tract because approximately 390.55 million tons of Federal recoverable reserves would remain for competitive leasing. The Bureau has the option to request the Regional Coal Team to redelineate the Thundercloud Tract and add coal, if it is determined that additional reserves would improve competition.

An environmental assessment has been prepared on the proposed exchange. This analysis found that the environmental impacts of the proposal are not significant pursuant to the National Environmental Policy Act of 1969. Accordingly, no environmental impact statement is warranted. Copies of the environmental assessment may be obtained from the Bureau's Casper District office; call Charles F. Wilkie at (307) 261-5554.

A public hearing on the proposed exchange has been tentatively scheduled in the Gillette Community Recreation Center, 1000 Douglas Highway, Gillette, Wyoming, on May 23, 1985, at 9:00 a.m. If anyone requests by May 10, 1985 that the Bureau hold this hearing, it will be held. Confirmation of the hearing, if held, will be announced in the *Casper Star Tribune* at least one week prior to the hearing. Anyone requesting a hearing or wishing to provide an oral statement at the hearing should notify Don Brabson by May 10, 1985. If held, the hearing will be the opportunity for anyone to provide comments on the merits of the exchange, the preliminary public interest findings, the environmental assessment, or any other aspect of the exchange proposal. If anyone would rather provide written comments in lieu of verbal testimony, he or she may do so at the hearing or by writing to the Wyoming State Director, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Written comments are requested by the hearing date.

Hillary A. Oden,

Wyoming State Director.

[FR Doc. 85-9713 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-22-M

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet May 23-25, 1985, at the Klamath Falls County Courthouse Annex, 305 Main, Klamath Falls, Oregon. The meeting hours will be 8:00 a.m. to 5:00 p.m. on Thursday, the 23rd, 11:00 a.m. to 5:00 p.m. on Friday, the 24th and 8:00 a.m. to 11:00 a.m. on Saturday, the 25th. Council members will also participate in a field tour highlighting BLM's forestry program on Friday morning, May 24. The proposed agenda for the meetings is:

Thursday, May 23

Morning

New member orientation and election of officers for 1985; Overview of Bureau of Land Management (BLM) and Forest Service Interchange Project; Summary of proposed Interchange legislation.

Afternoon

Discussion by BLM State and Forest Service Regional officials on the Interchange; Presentation on BLM's Forestry Program; Discussion of BLM/Forest Service draft Grazing Fee Study; Meeting of Council subcommittees (Renewable Resources, Lands, and Energy and Minerals).

Friday, May 24

Morning

Meeting of Council subcommittees, following field tour highlighting BLM's forestry program.

Afternoon

Public Statement Period; Report on previous Council resolutions and discussion of agenda for future Council meetings; Meeting the Council subcommittees.

Saturday, May 25

Morning

Final meetings of Council subcommittees; Discussion of subcommittee recommendations and passing of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be provided for members of the public to make oral statements to the Council, beginning at 1:00 p.m., Friday, May 24. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by May 17 to the Bureau of Land Management's Oregon State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be

necessary to limit the length of oral presentations.

DATES: May 23, 24, and 25—Council Meeting. May 24—Public Statements.

ADDRESS: Copies of public statements should be mailed by May 17 to: Director, Oregon State Office (912), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, D.C. Office, BLM, telephone (202) 343-2054; or Ed Ciliberti, Public Affairs Chief, Oregon State Office, BLM, telephone (503) 231-6277.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of the Bureau.

Robert F. Burford,

Director.

April 17, 1985.

[FR Doc. 85-9689 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

[Lease OCS-P 0409]

Outer Continental Shelf; Proposed Development and Production Plan for the Cities Service San Miguel Project; Intent to Prepare an Environmental Impact Statement

AGENCY: Minerals Management Service (MMS), Pacific Outer Continental Shelf (OCS) Region, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Minerals Management Service-Pacific Outer Continental Shelf Region, the County of San Luis Obispo, the California State Lands Commission, the California Coastal Commission, and the County of Santa Barbara will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed San Miguel Project which covers the development of OCS oil and gas resources offshore San Luis Obispo and Santa Barbara Counties, California. The MMS Pacific OCS Region has determined that known and further cumulative development of the San Miguel Area is an action which will require preparation of an EIS because of the nature and magnitude of environmental impacts. This EIS/EIR will include proposed development by

Cities Service of the San Miguel Project as well as anticipated future development of oil and gas resources in the northern Santa Maria Basin Area, offshore Santa Barbara and San Luis Obispo Counties, California.

The draft EIS/EIR is scheduled for completion in December, 1985. A Notice of Availability will be published in the *Federal Register* establishing dates for the comment period following distribution of the draft. Those wishing to assist MMS in determining the scope of the San Miguel Area Study EIS/EIR should write to: William E. Grant, Regional Director, Minerals Management Service, Pacific OCS Region, 1340 W. 6th Street, Los Angeles, CA 90017. Comments on the scope of this project should be received no later than June 7, 1985.

A public workshop (9:00 A.M.-1:00 P.M.) on the proposed project is scheduled for May 1, 1985, at the Old County Courthouse (Room 202), San Luis Obispo, California. In addition an agency hearing (10:00 A.M.) and a public hearing (8:00 P.M.-9:00 P.M.) are scheduled on May 8, 1985. The agency hearing is to be held at the Old County Courthouse; the public hearing is scheduled at the South County Regional Center, 800 W. Branch, Arroyo Grande, California. Federal, State, or local governments and interested groups or individuals requiring further information should call Mary Elaine Warhurst in the MMS Pacific OCS Regional Office at (213) 688-4360, 1340 W. 6th Street, Los Angeles, CA 90017.

Supplementary Information

Lease OCS-P 0409 is located approximately 8.5 miles west of Pt. Sal in the Santa Maria Basin offshore California in water depths ranging from 325-350 feet. The lease is a part of Tract No. 182 (Block 22, NI 10-6) which was bid for in OCS Sale No. 53 on May 28, 1981. The major features of the proposed development project include: (1) A single eight-leg platform (designated as Platform Julius) with seventy well slots; (2) Subsea pipelines to a landfall at the Guadalupe Oil Field in San Luis Obispo County; (3) onshore pipelines to an onshore processing facility; and (4) onshore processing facility to be located on a site in San Luis Obispo County and designed to handle approximately 40,000 barrels of oil per day (BOPD).

Production from up to six additional platforms will be considered in the San Miguel Area Study EIS/EIR for the purpose of assessing cumulative impacts. The San Miguel Area development includes a total of 34 OCS leases and tracts offshore Pt. Sal.

This EIS/EIR will provide the information needed to evaluate proposed and future activities in the Federal OCS in the northern Santa Maria Basin. Since a Development and Production Plan (DPP) has been submitted for OCS-P 0409, a detailed, site-specific, impact analysis will be provided in the EIS/EIR for this platform. Decisions by the MMS on the platform and by the County on the proposed onshore facility will follow certification of the EIS/EIR.

Operators proposing additional platforms in the San Miguel Study Area will be required to conduct the appropriate site-specific geohazards, cultural resource and biological surveys and to submit Development and Production Plans (DPP's). Documents included in these submittals are: Plan of Development, Environmental Report, Oil Spill Contingency Plan, Hydrogen Sulfide Contingency Plan, and survey and data reports. The MMS will evaluate environmental impacts from additional development activities in subsequent Environmental Assessments, or depending on the significance of the impacts, in Environmental Impact Statements. The EIS/EIR will analyze the environmental consequences of the proposed project in compliance with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Significant issues to be discussed include, but are not limited to: Air quality, water quality, terrestrial and marine biota, endangered species, cultural resources, aesthetic resources, commercial fishing, military use, and land use. Alternatives to be considered include options to modify, defer, or disapprove the proposed development plans.

James W. Sutherland,

Acting Regional Director, Pacific OCS Region.

[FR Doc. 85-9702 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Overmountain Victory National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Overmountain Victory National Historic Trail Advisory Council will be held at 10:00 a.m. on Wednesday, May 29, 1985, at Blue Ridge Parkway Office, 700 Northwestern Bank Building, Asheville, North Carolina 28801.

The purpose of the Overmountain Victory National Historic Trail Advisory Council is to consult and advise with the Secretary of the Interior on all matters of planning, management and trail development of the Overmountain Victory National Historic Trail. The agenda will include a discussion of the draft comprehensive management plan.

The members of the Advisory Council are as follows:

Mr. Frank Robinson, Chairman,
Elizabethton, Tennessee
Mr. Walter Hindricks, Abington,
Virginia
Mr. Roy A. Taylor, Black Mountain,
North Carolina
Mr. Walter H. Schrader, Columbia,
South Carolina
Mr. Dennis Kline, Rogersville,
Tennessee
Mrs. Jean Hawkins, Hilton Head, South
Carolina
Mr. David Lloyd Thomas, Greenville,
South Carolina
Mr. James Robert Hartbarger, Dillsboro,
North Carolina
Mr. Fred L. Burgin, Jr., Rutherfordton,
North Carolina
Mr. Hugh Atkins, Spartanburg, South
Carolina
Mr. Hubert Hendrix, Spartanburg, South
Carolina
Mr. Jack D. Stansbury, Hampton,
Tennessee
Dr. J. N. Lipscomb, Gaffney, South
Carolina
Mrs. Grace Vance, Plumtree, North
Carolina
Mr. Carl Gillis, Jr., Adrian, Georgia
Mr. William H. Hecht, Vienna, Virginia
Mr. Richard L. Heffner, Atlanta, Georgia
Mr. David B. Morgan, III, Asheville,
North Carolina
Mr. John S. Wilkerson, Clover, South
Carolina
Mr. George Olson, Asheville, North
Carolina
Mr. Andrew Duncan, Jr., Wilkesboro,
North Carolina
Mr. Terry Chilcoat, Norris, Tennessee

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Paul Swartz, Chief, Planning and Compliance Division, National Park Service, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303. Telephone 404/221-5465. Minutes of the meeting will be available for public inspection at the above address

approximately 4 weeks after the meeting.

Dated: April 12, 1985.

Paul B. Hartwig,

Acting Regional Director, Southeast Region,
[FR Doc. 85-9741 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 13, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 8, 1985.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Napa County

St. Helena, *Helios Ranch*, 1575 St. Helena Hwy.

San Francisco County

San Francisco, *St. Joseph's Hospital*, 355 Buena Vista Ave. East

CONNECTICUT

Middlesex County

Middletown, *Washington Street Historic District*, Roughly bounded by Washington and Main Sts., Washington Terrace and Vine St.

New Haven County

Middlebury, *Middlebury Center Historic District*, Roughly bounded by Library Rd., North and South Sts. and Whittemore Rd.

IDAHO

Canyon County

Nampa, *Nampa City Hall*, 203 Twelfth Ave. S.

Kootenai County

Coeur d'Alene, *Davey, Harvey M., House*, 315 Wallace Ave.

ILLINOIS

Cook County

Chicago, *Foley, Jennie, Building*, 626-628 S. Racine Ave.

Chicago, *Guyon Hotel*, 4000 W. Washington Blvd.

Lansing, *Ford Airport Hanger*, Glenwood-Lansing Rd. and Burnham Ave.

DeKalb County

Sandwich, *von KleinSmid Mansion*, 218 W. Center

Gallatin County

Equality, *Crenshaw House*, Off Rt. 1

Greene County

Carrollton, *Carrollton Courthouse Square Historic District*, Roughly bounded by S. Main, W. Fifth, N. Main and W. Sixth Sts.

Kane County

Batavia, *Wilson, Judge Isaac, House*, 406 E. Wilson St.

Macon County

Decatur, *Decatur Downtown Historic District*, Merchant St. roughly bounded by North, Water, Wood, and Church Sts.

McHenry County

Crystal Lake, *Palmer, Col. Gustavus A., House*, 5516 Terra Cotta Rd.

Schuyler County

Rushville, *Phoenix Opera House Block*, 112-122 W. Lafayette St.

St. Clair County

East St. Louis, *Majestic Theatre*, 240-246 Collinsville Ave.

LOUISIANA

Avoyelles Parish

Bunkie vicinity, *Frithland, LA 29*
Evergreen vicinity, *Clarendon Plantation House, LA 29*
Mansura, *Roy, Dr. Thomas A., Sr., House, L¹ Eglise St.*

Lafayette Parish

Lafayette, *Latiolais, Alexandre, House*, 900 E. Butcher Switch Rd.

Ouachita Parish

Monroe, *Neville High School*, 600 Forsythe Ave.

Pointe Coupee Parish

Jarreau vicinity, *LeBeau House and Kitchen, LA 414*

Richland Parish

Mangham, *Mangham State Bank Building*, Main and Horace Sts.

Vermilion Parish

Lake Arthur vicinity, *Narrows plantation House*, Off Hwy. 717 on S. shore of Lake Arthur

MASSACHUSETTS

Middlesex County

Watertown, *Pratt, Miles, House*, 106 Mt. Auburn St.

Worcester County

Dudley, *Back Tavern*, Dudley Center Rd.
Fitchburg, *Duck Mill*, 60 Duck Mill Rd.
Milford, *Memorial Hall*, School St.

MICHIGAN

Wayne County

Detroit, *Century Building and Little Theatre*, 58-62-E. Columbia

MISSISSIPPI

Adams County

Natchez vicinity, *Oakwood*, Off Kingston Rd.

MONTANA**Lewis and Clark County**

Helena, *Western Clay Manufacturing Company*, 2915 Country Club Rd.

NEBRASKA**Garfield County**

Barwell vicinity, *Garfield County Frontier Fairgrounds*, Off NE 91

Lancaster County

Lincoln, *Tifereth Israel Synagogue*, 344 S. 18th St.

Lincoln County

North Platte, *Fox Theatre*, 301 E. 5th
North Platte, *Hotel Yancey*, 221 East 5th St.

Saunders County

Wahoo, *Wahoo Burlington Depot*, 431 W. Third

PENNSYLVANIA**Beaver County**

Ambridge, *Economy Historic District*, Old Economy Village roughly bounded by PA 65, 12th, Merchant, and 16th Sts.

Bucks County

Doylestown Borough, *Doylestown Historic District*, Roughly bounded by Union, Cottage and E. Ashland Sts., Hillside Ave. and S. and N. West Sts.

Chester County

Embsville vicinity, *Harlan House*, PA 162 and Star Gazer Rd.
Spring City, *Forge, Vincent, Mansion*, Cook's Glen Rd. R.D.

Dauphin County

Hummelstown, *Keystone Hotel*, 40 East Main St.

Jefferson County

Ponxsutawney, *Jefferson Theater*, 230 N. Findley St.

Philadelphia County

Philadelphia, *McCallum Manor*, 6653 McCallum Ave.
Philadelphia, *National Bank of North Philadelphia*, 370 N. Broad St.
Philadelphia, *Pennsylvania Institute for the Deaf and Dumb*, 7500 Germantown Ave.
Philadelphia, *Powelton Historic District*, Roughly bounded by Brandywine St., 32nd to 39th Sts. and Lancaster Ave.

Potter County

Coudersport, *Coudersport Historic District*, Roughly bounded by Seventh, East, Water and Main Sts.

Warren County

Warren, *Jefferson, John P., House*, 119 Market St.

TENNESSEE**Davidson County**

Lakewood, *Lakewood Commercial District (Old Hickory MRA)*, Roughly bounded by 22nd St. and Old Hickory Blvd.
Old Hickory, *DuPont Fire Hall (Old Hickory MRA)*, 1010 Hadley Ave.

Old Hickory, *Old Hickory Historic District (Old Hickory MRA)*, Bordered by Hadley Ave., Jones St., Eight St., Riverside Dr. and 15th Ave.

Old Hickory, *Old Hickory Methodist Church (Old Hickory MRA)*, 1218 Hadley Ave.
Old Hickory, *Old Hickory Post Office (Old Hickory MRA)*, 1010 Donelson Ave.

UTAH**Iron County**

Page Ranch vicinity, *Page, Daniel R. and Sophia G., House*, Richie Flat at W. edge of Harmony Mountains

Salt Lake County

Magna, *Empress Theatre*, 9104 W. 2700 South
Salt Lake City vicinity, *Baldwin, Nathaniel, House*, 2374 Evergreen Ave.

Sanpete County

Ephraim, *Dorius, John, Jr., House*, 46 W. 100 North

Summit County

Woodland, *Hewlett, Verner O., Ranch House (Stewart Ranch TR)*, Off UT 35

Tooele County

Stockton, *Stockton Jail*, Off UT 36

Wasatch County

Woodland vicinity, *Stewart Hewlett, Lester F. and Margaret, Ranch House (Stewart Ranch TR)*, Off UT 35
Woodland vicinity, *Stewart Ranch Foreman's House (Stewart Ranch TR)*, Off UT 35
Woodland vicinity, *Stewart, Barnard J., Ranch House (Stewart Ranch TR)*, Off UT 35
Woodland vicinity, *Stewart, Charles B., Ranch House (Stewart Ranch TR)*, Off UT 35
Woodland vicinity, *Stewart, Samuel W., Ranch House (Stewart Ranch TR)*, Off UT 35
Woodland vicinity, *Stewart-Hewlett Ranch Dairy Barn (Stewart Ranch TR)*, Off UT 35
Woodland vicinity, *White, Ethelbert and Stewart, William M., Ranch House (Stewart Ranch TR)*, Off UT 35

VERMONT**Bennington County**

Manchester, *Lawrence, Amos, House*, Richville Rd.

Windham County

Vernon, *Pond Road Chapel*, Pond Rd., Town Hwy. #2

VIRGINIA**Alexandria (Independent City)**

St. Paul's Episcopal Church, 226 S. Pitt St.

Franklin (Independent City)

Franklin Historic District, US 58 and US 258

Franklin County

Otter Creek Archaeological Site (44FR31)

Greenville County

Green, *John, Archeological Sites (44GV1 and 44CV2)*

Henry County

Martinsville vicinity, *Beaver Creek Plantation*, VA 108

WASHINGTON**Jefferson County**

Port Townsend, *Edwards, Joel, House (Victorian Residences in Port Townsend TR)*, 913—25th St.
Port Townsend, *Harper, F.C., House (Victorian Residences in Port Townsend TR)*, 502 Reed St.
Port Townsend, *House at 1723 Holcomb Street (Victorian Residences in Port Townsend TR)*, 1723 Holcomb St.
Port Townsend, *House at Fir Street (Victorian Residences in Port Townsend TR)*, 503 Fir St.
Port Townsend, *Schlager, Ferdinand, House (Victorian Residences in Port Townsend TR)*, 810 Rose St.

WISCONSIN**Dane County**

Madison, *West Madison Depot, Chicago, Milwaukee, and St. Paul Railway*, 640 W. Washington Ave.

[FR Doc. 85-9737 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Proposed NHL Boundaries

April 15, 1985.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127, Attention: Chief of Registration, (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including

maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

PALUGVIK ARCHEOLOGICAL DISTRICT NATIONAL HISTORIC LANDMARK

Hawkins Island, Prince William Sound,
Cordova-McCarthy Div., Alaska

The boundaries have been drawn to include all sites and cultural features and to protect the integrity of the district setting. From a point of beginning located at the tip of the land in the SE 1/4 of the NW 1/4 of the NE 1/4 of the SW 1/4 of Section 26, Township 16 S, Range 6 W, C.R.M., proceed 0° and 200 m, thence 67° and 1000 m, thence 73° and 900 m, thence 162° and 300 m, thence the mean high tide line to the POB.

CARLISLE INDIAN INDUSTRIAL SCHOOL NATIONAL HISTORIC LANDMARK

Carlisle, Cumberland County, Pennsylvania

Beginning on the southeast bank of the southeastern branch of Letort Spring Run on the southwest side of Ashburn Drive; thence proceeding southeast to the northern corner of the block bounded by Lovell Avenue, Ashburn Driver Garrison Lane and Guardhouse Lane; thence proceeding 200 feet southwest along the southeast side of Lovell Avenue, 340 feet southeast along a line perpendicular to the previous line, and 250 feet northeast along a line perpendicular to the previous line to the northeast side of Ashburn Drive; thence proceeding 150 feet southeast along the northeast side of Ashburn Drive, 200 feet northwest along a line perpendicular to the previous line, and 80 feet northwest to the southwest side of Forbes Avenue; thence proceeding 350 feet northeast to a northeast-southeast wall that runs perpendicular to Forbes Avenue; thence proceeding along this wall which passes to the rear (southeast) of Buildings 102, 123, 104, 106, 124, 108, 110, 125 and 112 to a point where this wall intersects with a southwesterly projection of the center line of Wright Avenue; thence proceeding south southwest approximately 970 feet along a line parallel to the southeast side of the running track to the northeast side of Ashburn Drive; thence proceeding 280 feet northwest along the northeast side of Ashburn Drive and 1350 feet south southwest along the northwest side of Garrison Lane and Flower Road, and across Flower Road to its southwestern side where it curves to the northwest; thence proceeding northwest; southwest and northwest along the southwestern edge of the service road to the southwest of (behind) Buildings 32-34 to a point 30 feet south of the southern corner of Building 32; thence proceeding northeast approximately 130 feet along a line perpendicular to Flower Road to the northeastern edge of Flower Road; thence proceeding 80 feet southeast along the northeast side of Flower Road and 400 feet northeast along a line perpendicular to the previous line to the southwestern side of Guardhouse Lane; thence proceeding 350 feet northwest along the southwestern side of Guardhouse Lane to the northwestern side of

Lovell Avenue, 100 feet southwest along the northwestern side of Lovell Avenue, and 100 feet northwest along a line perpendicular to the previous line to the east side of Indian Garden Lane; thence proceeding 260 feet north northeast across and then along the west side of Indian Garden Lane; thence proceeding 300 feet northwest along a line perpendicular to the previous line to the southeast bank of Letort Spring Run and thence along the southeast bank of Letort Spring Run to the point of beginning.

GREAT FALLS PORTAGE NATIONAL HISTORIC LANDMARK

Great Falls, Cascade County, Montana

Starting at a point in the southwest corner of Section 36, T22N, R5E; thence south approximately 1.5 miles to a point in Section 12, T21N, R5E; thence east approximately .5 mile to the east line of Section 12; thence south approximately .8 mile along said section line; thence southwest approximately 3.2 miles to a point on the south line of Section 26, T22N, R5E; thence southwest approximately 1.85 miles to the midpoint on the north line of Section 3, T20N, R5E; thence southwest approximately 3.1 miles to the east curb of a county road in Section 7, T20N, R5E; thence north approximately .9 miles along said road to a point; thence northeast approximately 2.7 miles to a point in Section 33, T21N, R5E; thence northeast approximately 2.9 miles to the midpoint of the south line of Section 14, T21N, R5E; thence north to a point in Section 35, T22N, R5E; thence east to the point of the beginning.

Starting at a point in Section 20, T20N, R4E; thence southwest approximately 2.4 miles to a point on the north curb of a street in Section 25, T20N, R5E; thence west approximately .3 mile to a point; thence northwest to a point; thence northeast approximately 2.6 miles to a point on the midline of Section 17, T20N, R4E; thence east approximately .3 mile to the north-south midline of Section 17; thence south approximately .65 mile along the midline of Sections 17 and 20, T20N, R4E, to the point of the beginning.

ALKALI POINT/ALKALI RIDGE NATIONAL HISTORIC LANDMARK

Blanding, San Juan County, Utah

Northern Subdistrict: The Northern Subdistrict of the proposed Alkali Ridge National Historic Landmark lies within Sections 14 and 23 of Township 36 South, Range 23 East, USGS Quadrangle Verde 3 NE, Utah, 7.5', 1954. The northeast corner is in the SW, SW, NW, NE quarter of Section 14. The boundary follows the edge of Alkali Point 2000 feet southeast to the NE, NE, NW, SE quarter of Section 14. From here, the boundary extends due south for 1450 feet to the NE, NE, SW, SE quarter of Section 14. The next boundary point, again following southeast along the edge of Alkali Point, is 1800 feet away, at the section marker of Sections 13, 24, 23 and 14. The southeast corner of the proposed boundary is 4100 feet due south, on the section line between 24 and 23 (NE, NE, SE, SE, Section 23). One mile due west is the southwest corner of the proposed boundary (NW, NW, SW, SW, Section 23).

The northwest corner is due north on the section line between Sections 14 and 15, at the SW, SW, NW, NW quarter of Section 14.

Southern Subdistrict: The Southern Subdistrict of the proposed Alkali Ridge National Historic Landmark falls within Sections 30 and 31 of Township 36 South, Range 24 East, Sections 6 and 7 of Township 37 South, Range 24 East, Sections 1 of Township 37 South, Range 23 East, and Section 36 of Township 36 South, Range 23 East. The major portion of this subdistrict is located on USGS Quadrangle Verde 3 SE, Utah, 7.5', 1954, with a small part of the northern portion located on USGS Quadrangle Verde 3 NE, Utah, 7.5', 1954. The northeast corner of the subdistrict is located at the head of Bradford Canyon, SW, SW, SE, NE of Section 30. Due south, 14560 feet, on the western edge of Bradford Canyon is the southeast corner (NW, NW, SE, NE quarter of Section 7). The southwest corner is 2700 feet due west in the SW, SW, NW, NW quarter of Section 7. 3700 feet to the northwest is another boundary corner located in the NW, NW, SE, SE quarter of Section 1. Due north, 8200 feet, in the SW, SW, NE, NE quarter of Section 36 is the next corner. The northwest corner is 5500 feet northeast from this point in the SW, SW, SW, NE quarter of Section 30.

ZUNI-CIBOLA COMPLEX NATIONAL HISTORIC LANDMARK

Zuni, McKinley/Valencia Counties, New Mexico

1. Village of the Great Kivas: Beginning about 200 feet east of the northwestern corner of the Nutria Dam as indicated in the 1938 aerial photograph, the boundary proceeds about 1950 feet north, then about 4100 feet west, then about 2750 feet south to its intersection with the northern edge of the road or drive which comes off the larger road paralleling Nutria Creek, then about 3100 feet in a generally eastern direction along the northern edge of the drive till its intersection with the north edge of said road paralleling Nutria Creek, then about 1300 feet in a generally northeastern direction along the northern edge of road paralleling Nutria Creek, then about 1200 feet north to the point of beginning. The landmark boundary includes three house-blocks, two great kivas, several small kivas, petroglyphs and pictographs north of the living and/or ceremonial areas, plus an area of potential archeological significance west of the known occupational zone.

2. Yellow House: Beginning at a point on the northern right-of-way of State Route 53 about 1500 feet west of its intersection with the southern extension of State Route 32, the boundary proceeds west along the northern right-of-way of State Route 53 about 1800 feet, then north about 1700 feet, then east about 1700 feet, then south about 1200 feet to the point of beginning. The boundary encloses the pueblo containing probably at least 250 rooms, two possible plaza areas, several kivas, and trash mounds.

3. Hawikuh: Beginning at a point about 7150 feet northwest (N 38° W) of the intersection of the main north-south road through Ojo Caliente with the east/west road

just south of the main part of town and north of the reservoir, the boundary proceeds north about 2500 feet, then west about 2500 feet then south about 2500 feet, and then east about 2500 feet to point of beginning. The boundary includes the pueblo, associated kivas, and the 17th century mission complex.

4. Kechipbowa: Beginning at a point about 5000 feet northeast (N 47° E) of the intersection of the main north/south road through Ojo Caliente with the east/west road just south of the main part of town and north of the reservoir, the boundary proceeds east about 2200 feet, then north about 2350 feet, then west about 2200 feet, then south about 2350 feet. The landmark boundary includes a pueblo of approximately 150-200 rooms, at least 2 plaza areas, a small mission church, a small associated convent, at least two major trash areas, and possible pit houses in the southwest corner.

We are presently requesting comments on the proposed boundary for Watrous National Historic Landmark, located at Watrous, Mora County, New Mexico:

The boundaries of the Watrous National Historic Landmark encompass those portions of the La Junta Valley that retain historic integrity from the period associated with the Santa Fe Trail. The boundaries include all the routes of the Cimarron Cutoff and Mountain Branch of the Santa Fe Trail which came together in the Valley, the surviving buildings retaining architectural integrity, the four river crossings that were significant to the valley's pattern of development, and the open semi-arid rangeland that has historically been associated with the trail and unites the significant features within the valley.

The eastern boundary has been drawn west of the 1879 town of Watrous and the Atchison, Topeka and Santa Fe Railroad tracks to exclude development that occurred after the period associated with the Santa Fe Trail. It extends southwest to the southern portion of the valley, turning west at the boundary of Mora and San Miguel Counties. The southern boundary roughly follows the county line to include the Sapello River Crossing and the Fort Union Corral and Buildings. The western boundary roughly follows the hills and escarpments of the valley to include the earliest route of the Mountain Branch and the properties associated with James Boney's descendants. Along the southern bank of the Mora River the boundary extends west to the location of James Boney's dam, which is also the western boundary of the Boney and Scolly land grants. Crossing the Mora River at this point, the boundary then proceeds east along the northern bank to the edge of the valley and north to encompass Puerto del Canon, where the earliest route of the Mountain Branch entered the valley. The northern boundary extends from a point northwest of the Puerto southeast along the northern edge of the valley to encompass the 1870 village of Tiptonville, which was the meeting point of the trail's various routes and an important commercial center during the late history of the Santa Fe Trail. The northern boundary extends southeast to the area settled as La Junta and marked by the Watrous Ranch and the junction of the Mora and Sapello Rivers. It is here that one of the routes of the

Cimarron Cutoff entered the valley and crossed the Mora River. At a point east of the Watrous Ranch the boundary turns south toward the edge of the town of Watrous.

We are presently requesting comments on the proposed boundary for Deadwood Historic District, located at Deadwood, Lawrence County, South Dakota:

The city limits form the boundary of the district.

The basic Y shape of the community has remained intact as the rugged topography has allowed for little new growth. These more recent structures are clustered at the edges of the town, along the narrow, valley streets. The central business district is concentrated on Main Street, which has an exceptional collection of Victorian era commercial buildings. Businesses are also found on the side streets of Lee and Deadwood and along the one prong of the Y, Sherman Street. Residential neighborhoods are built up the hillsides. Industrial activities are found on the hillside at the fork of the Y and along Main Street, on Whitewood Creek, at the opposite end.

[FR Doc. 85-9738 Filed 4-22-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Reinstatement
Bureau/Office: Office of Proceedings
Title of Form: Rules for System Diagram
Maps, financial assistance for
Railroad Lines

OMB Form No.: 3120-0045
Agency Form No.: N/A
Frequency: Annually
Respondents: Railroads filing
applications for abandonment
No. of Respondents: 30-50
Total Burden Hrs.: 4,420

James H. Bayne,

Secretary.

[FR Doc. 85-9709 Filed 4-22-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of MCC by the addition of Bell Communications Research, Inc. The additional notification was filed for the purpose of extending the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to MCC, and its general areas of planned activities, are given below.

MCC is a joint venture corporation which, with the addition of Bell Communications Research, Inc., consists of the following shareholders:

Advanced Micro Devices, Inc.
Allied Corporation
Bell Communications Research, Inc.
("Bellcore")
BMC Industries, Inc.
The Boeing Company
Control Data Corporation
Digital Equipment Corporation
Eastman Kodak Company
Gould Inc.
Harris Corporation
Honeywell, Inc.
Lockhead Corporation
Martin Marietta Corporation
Minnesota Mining and Manufacturing Company
Mostek Corporation, a subsidiary of
United Technologies Corporation
Motorola, Inc.
National Semiconductor Corporation
NCR Corporation
RCA Corporation
Rockwell International Corporation
Sperry Corporation

MCC's shareholders and each of their subsidiaries, and United Technologies Corporation and each of its subsidiaries, are parties to MCC. For the purposes of agreements relating to MCC research and development, the following companies are deemed subsidiaries of Bellcore, and thus parties to MCC: NYNEX Service Company, Bell Atlantic Management Services, Inc., Ameritech Services, Inc.

BellSouth Services Incorporated
The Mountain States Telephone and
Telegraph Company
Northwestern Bell Telephone Company
Pacific Northwest Bell Telephone
Company
Southwestern Bell Telephone Company
The Pacific Telephone and Telegraph
Company
Illinois Bell Telephone Company
Indiana Bell Telephone Company,
Incorporated
Michigan Bell Telephone Company
The Ohio Bell Telephone Company
Wisconsin Telephone Company
The Bell Telephone Company of
Pennsylvania
The Diamond State Telephone Company
The Chesapeake and Potomac
Telephone Company
The Chesapeake and Potomac
Telephone Company of Maryland
The Chesapeake and Potomac
Telephone Company of Virginia
The Chesapeake and Potomac
Telephone Company of West Virginia
New Jersey Bell Telephone Company
Southern Bell Telephone and Telegraph
Company
South Central Bell Telephone Company
New England Telephone and Telegraph
Company
New York Telephone Company
Bell Telephone Company of Nevada
Each of the subsidiaries of these
companies is also a party to MCC.

MCC will engage in advanced, long-
term research and development
activities in the following general areas
of microelectronics and computer
technology:

a. *Advanced Computer Architectures:*
artificial intelligence/knowledge based
systems, data base architectures, human
interface, and parallel processing;

b. *Packaging/Interconnect:* processes,
materials, and equipment for automated
high density packaging of
semiconductors;

c. *Software Technology:* tools and
methodologies regarding software
productivity and software quality;

d. *VLSI/CAD (very large scale
integration/computer-aided design):*
CAD tools and systems with a focus on
VLSI chip designs.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-9734 Filed 4-22-85; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board; Meeting

The Second meeting of the Missing
Children's Advisory Board will be held

in Louisville, Kentucky on May 18, 1985.
The meeting will take place at the
Brown Hotel, 4th and Broadway,
Louisville, Kentucky, 40202, from 9:00
a.m. to 5:30 p.m. The public is welcome
to attend.

The Board will discuss coordination
and activities of missing children's
programs.

For further information, please contact
Michelle Easton, Office of Juvenile
Justice and Delinquency Prevention, 633
Indiana Avenue N.W., Washington, D.C.
20531, (202) 724-7655.

Dated: April 11, 1985.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and
Delinquency Prevention.

[FR Doc. 85-9786 Filed 4-22-85; 8:45 am]

BILLING CODE 4410-16-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the
Trade Act of 1974 (19 U.S.C. 2273) the
Department of Labor herein presents
summaries of determinations regarding
eligibility to apply for adjustment
assistance issued during the period.

In order for an affirmative
determination to be made and a
certification of eligibility to apply for
adjustment assistance to be issued, each
of the group eligibility requirements of
section 222 of the Act must be met.

(1) That a significant number or
proportion of the workers in the
workers' firm, or an appropriate
subdivision thereof, have become totally
or partially separated,

(2) That sales or production, or both,
of the firm or subdivision have
decreased absolutely, and

(3) That increases of imports of
articles like or directly competitive with
articles produced by the firm or
appropriate subdivision have
contributed importantly to the
separations, or threat thereof, and to the
absolute decline in sales or production.

Negative Determinations

In each of the following cases the
investigation revealed that criterion (3)
has not been met. A survey of customers
indicated that increased imports did not
contribute importantly to worker
separations at the firm.

TA-W-15, 719; Auburn Die Co., Auburn,
ME

TA-W-15, 709; Amcast Industrial Corp.,
Ironton Div., Ironton, OH

In the following cases the
investigation revealed that criterion (3)
has not been met for the reasons
specified.

TA-W-15, 714; ITT Rayonier, Inc.,
Peninsula Plywood Div., Port
Angeles, WA

Aggregate U.S. imports of cedar
plywood siding are negligible.

TA-W-15, 699; American Hoechst Corp.,
Baton Rouge Works, Baton Rouge,
LA

Aggregate U.S. imports of chloroacetic
acid did not increase as required for
certification.

TA-W-15, 715; LTV Steel Co.,
Greenwich Sales Office,
Greenwich, CT

The closing of the sales office was
attributable to a reorganization of the
corporation.

TA-W-15, 698; Westinghouse Electric
Corp., Small Motor Division,
Bellevue, OH

Declines in production and
employment at the subject firm were
attributable to a loss in export sales.

Affirmative Determinations

TA-W-15, 717; Taverly, Inc., New York,
NY

A certification was issued covering all
workers separated on or after December
28, 1983 and before July 15, 1984.

TA-W-15, 720; Elite Thames Co., Inc.,
Brooklyn, NY

A certification was issued covering all
workers separated on or after January 2,
1984 and before November 30, 1984.

TA-W-15, 712; Foster Grant Corp.,
Leominster, MA

A certification was issued covering all
workers separated on or after November
29, 1984.

TA-W-15, 713; Hercules Shoe
Manufacturing Corp., Brooklyn, NY

A certification was issued covering all
workers separated on or after January 9,
1984 and before October 14, 1984.

TA-W-15, 718; A.N. Wolf Shoe Co., Div.,
Miller, Hess & Co., Denver, PA

A certification was issued covering all
workers of the firm separated on or after
June 1, 1984 and before January 31, 1985.

TA-W-15, 700; Gateway Coal Co.,
Prosperity, PA

A certification was issued covering all
workers separated on or after July 1,
1984.

TA-W-15, 701; General Electric Co.,
Consumer Electronics Business
Operations, Portsmouth, VA

A certification was issued covering all workers separated on or after January 17, 1984.

TA-W-15, 703; J & A Young, Inc.,
Lindenhurst, NY

A certification was issued covering all workers separated on or after January 11, 1984 and before November 26, 1984.

TA-W-15, 704; Kagan-Lown & Co.,
Division of Penobscot Shoe Co.,
Oldtown, ME

A certification was issued covering all workers separated on or after July 1, 1984.

TA-W-15, 705; Lansford Fashions
Manufacturing Corp., Lansford, PA

A certification was issued covering all workers separated on or after January 5, 1984 and before February 28, 1985.

TA-W-15, 695; Lowndes Coat Co., East
Northport, NY

A certification was issued covering all workers separated on or after December 26, 1983 and before November 30, 1984.

TA-W-15, 706; LTV Steel Co., East
Hartford, CT

A certification was issued covering all workers separated on or after September 1, 1984 and before April 30, 1985.

I hereby certify that the aforementioned determinations were issued during the period April 8, 1985-April 12, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: April 16, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment
Assistance.

[FR Doc. 85-9750 Filed 4-22-85; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in Idaho

This notice announces the beginning of a new Extended Benefit Period in Idaho, effective on March 16, 1985, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals

who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each state unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on March 16, 1985, equals or exceeds 6 percent, so that for the week ending March 16, 1985, there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 31, 1985. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C. on April 15, 1985.

Franck C. Casillas,

Assistant Secretary of Labor.

[FR Doc. 85-9748 Filed 4-22-85; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in West Virginia

This notice announces the beginning of a new Extended Benefit Period in West Virginia, effective on February 3, 1985, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on January 19, 1985, equals or exceeds 6 percent, so that for the week ending January 19, 1985, there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 3, 1985. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to

regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C. on April 15, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

[FR Doc. 85-6752 Filed 4-22-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for

adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 3, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 3, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 15th day of April 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—)	Location	Date received	Date of petition	Petition No.	Articles produced
Airway Industries, Inc. (LGPNM)	Elwood City, PA	4/9/85	4/2/85	TA-W-15,904	Luggage.
Alcan Ingot & Recycling (Aluminum, Brick and Glass Wkrs)	Sabree, KY	4/11/85	4/8/85	TA-W-15,905	Primary aluminum products (remelt, sheet ingot, and billet extrusion).
Avtex Fibers, Inc. (ACTWU)	Meadville, PA	4/9/85	3/29/85	TA-W-15,906	Acetate fiber.
Cooper-Wise (Company)	Newark, NJ	4/11/85	4/2/85	TA-W-15,907	Steel forgings for shears and snips.
Dominion Automotive Industries, Inc. (workers)	Sevierville, TN	4/3/85	3/28/85	TA-W-15,908	Mirrows—truck industries.
General Electric Co., Battery Business Dept. (BGEW)	Gainesville, FL	4/9/85	4/1/85	TA-W-15,909	Nickel cadmium and sealed lead acid battery cells.
(The) Halliburton Co., IMCO Service Div. (workers)	Battle Mountain, NV	4/3/85	3/28/85	TA-W-15,910	Exploration of ground and crude barite.
Kellogg Company (workers)	Grenada, MS	4/11/85	4/8/85	TA-W-15,911	Pants and jeans for children and men.
North Shore Sportswear Co., Inc. (workers)	Glen Cove L.I., NY	4/4/85	4/1/85	TA-W-15,912	Ladies and coats and leather jackets.
Romany Ceramics, Inc. (Aluminum, Brick & Glass Wkrs)	East Sparta, OH	4/9/85	3/30/85	TA-W-15,913	White body, bright and matt glazed wall tile and red body quarry pavers.
Carus Chemical Co. (ICWU)	LaSalle, IL	3/29/85	3/23/85	TA-W-15,914	Potassium permanganate.
Chino Mines Co. (USWA)	Hurley, NM	4/3/85	3/26/85	TA-W-15,915	Copper ingot bars, blister sow molds.
Damon International, Ltd. (ACTWU)	Newberry, SC	4/5/85	3/26/85	TA-W-15,916	Men's dress shirts and ties.
Enro Shirt Company (ACTWU)	Woodruff, SC	4/5/85	3/28/85	TA-W-15,917	Men's dress shirts.
General Electric Co. (company)	Columbia, MD	4/9/85	4/4/85	TA-W-15,918	Microwave ovens.
Health-Tex, Inc. (ACTWU)	Cowpens, SC	4/5/85	3/26/85	TA-W-15,919	Knitting goods.
NCR Corporation—Clemson Development Center (workers)	Liberty, SC	4/5/85	4/1/85	TA-W-15,920	Personal computers.
South Branch Lumber (workers)	Howland, ME	4/3/85	4/1/85	TA-W-15,921	Raw lumber, saw mill, dry kiln-planer.
Spiegelberg Manufacturing Co. (workers)	Antonia, MO	4/5/85	3/27/85	TA-W-15,922	Producer handbags and office workers.
Stride Rite (company)	Presque Isle, ME	4/9/85	4/5/85	TA-W-15,923	Sewing topsider uppers.
Tennford Weaving Co. (workers)	Wartburg, TN	4/9/85	4/3/85	TA-W-15,924	Weave labels for clothing.
U.S. Steel Corp., Geneva Works (USWA)	Provo, UT	4/4/85	3/29/85	TA-W-15,925	Plate and pipe.

[FR Doc. 85-9751 Filed 4-22-85; 8:45 am]

BILLING CODE 4510-30-M

Wage and Hour Division**Certificates Authorizing the Employment of Learners at Special Minimum Wages**

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and §§ 522.20 to 522.25 as amended):

Flushing Shirt Mfg., Inc., Grantsville, MD; 1-18-85 to 1-17-86; 10 percent of the total number of factory production workers for normal labor turnover purposes (Men's shirts).

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and §§ 522.30 to 522.35, as amended):

Somerset Mfg. Co., Inc., Somerset, PA; 3-12-85 to 3-11-86; 5 percent of the total number of factory production workers for normal labor turnover purposes (Ladies' slips and sleepwear).

Each certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review of consideration thereof on or before May 8, 1985.

Signed at Washington, D.C. this 17th day of April 1985.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 85-9749 Filed 4-22-85; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY**Commission Meeting****ACTION: Notice of meeting.**

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of the thirty-eighth meeting of the National Commission for Employment Policy at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia.

DATES: May 16, 1985—10:00 a.m.—4:00 p.m. May 17, 1985—9:00 a.m.—11:30 a.m.

Status: This meeting will be open to the public.

Matters to be discussed: On Thursday afternoon the Commission will discuss issues and findings to date regarding its project on the effects of technological change (particularly computer and computer-based equipment) on job opportunities. On Thursday morning the Commission will hear updates on other Commission activities. On Friday the Commission will discuss its work plan for Program Year 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia W. McNeil, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, D.C. 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. Handicapped individuals wishing to attend should contact Velada Waller of the Commission staff so that appropriate accommodations can be made.

People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director at least 5 days before the meeting and not more than 7 days after the meeting.

In addition, members of the general public may request to mark oral

presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the Director at least 5 days before the meeting. This application should include: name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written statement.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of fact and views and shall not include any questioning of the Commissioners or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, D.C. 20005.

Signed in Washington, D.C., this 16th day of April 1985.

Patricia W. McNeil,

Director.

[FR Doc. 85-9753 Filed 4-22-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION**Forms Submitted for OMB Review**

In accordance with the Paperwork Reduction Act and OMB Guidelines, The National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421.

OMB Desk Officer: Carlos Tellez, (202) 395-7340.

Title: Letter to Recipients of NSF Funds.

Affected Public: Individuals.

Number of Respondents: 470 respondents, total of 235 burden hours.

Abstract: The Directorate for Science and Engineering Education requires information concerning existing cost-sharing support of grant recipients by private sector funding as part of an effort to encourage additional collaborative projects that would include private sector funding. This is a one-time collection of data form FY 84 and 85 grant recipients.

Dated: April 18, 1985.
Herman G. Fleming,
*National Science Foundation Reports
 Clearance Officer,*
 [FR Doc. 85-9674 Filed 4-22-85; 8:45 am]
 BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Qualification Program for Safety- Related Equipment; Meeting

The ACRS Subcommittee on Qualification Program for Safety-Related Equipment will hold a meeting on May 6, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Monday, May 6, 1985—8:30 a.m. until
 12:00 Noon*

The Subcommittee will discuss RES programs for plant aging and equipment qualification.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. A. Cappucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named

individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 18, 1985.
Morton W. Libarkin,
*Assistant, Executive Director for Project
 Review,*
 [FR Doc. 85-9778 Filed 4-22-85; 8:45 am]
 BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Fluid Dynamics and Emergency Core Cooling Systems; Cancellation of Meeting

The ACRS Subcommittee meeting on Fluid Dynamics and Emergency Core Cooling Systems scheduled for May 1, 1985, Room 1046, 1717 H Street, NW, Washington, DC has been cancelled. This notice was published Tuesday, April 16, 1985 (50 FR 15019).

Dated: April 18, 1985.
Morton W. Libarkin,
Assistant Director for Project Review,
 [FR Doc. 85-9776 Filed 4-22-85; 8:45 am]
 BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published March 19, 1985 (50 FR 11024). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the *Federal Register* approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the May 1985 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of

the Committee (telephone 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Reliability Assurance (valves), April 23, 1985, Washington, DC. The Subcommittee will continue discussion from the March 19 meeting regarding methods to enhance the reliability of air- and motor-operated valves.

Palo Verde, April 26, 1985, Phoenix, AZ. The Subcommittee will review the final reports for various construction deficiencies and the results of the preoperational testing as requested in ACRS letter dated December 15, 1981.

Combined Fluid Dynamics and Emergency Core Cooling System, May 1, 1985, Washington, DC—Cancelled.

Class 9 Accidents, May 2, 1985, Washington, DC. The Subcommittee will be briefed on draft NUREG-0956, "Source Term Reassessment."

Combined Waste Management and Site Evaluation, May 2 and 3, 1985, Washington, DC—Cancelled.

Reactor Operations, May 6, 1985, Washington, DC. The Subcommittee will discuss recent operating occurrences.

Qualification Program for Safety-Related Equipment, May 6, 1985, Washington, DC. The Subcommittee will discuss RES programs for plant aging and equipment qualification.

Safeguards and Security, May 7, 1985, Washington, DC. The Subcommittee will review the potential consequences of sabotage at nonpower reactors, be briefed by NMSS on sabotage protection at power reactors, and hear how the NRC Staff reviews and evaluates licensees' security plans.

Safety Research Program, May 8, 1985, Washington, DC. The Subcommittee will discuss the proposed NRC Safety Research Program and budget for FY 1987 and gather information for use by the ACRS in its preparation of the annual report to the Commission on the related matter.

Systematic Evaluation Program (San Onofre), May 15, 1985, Washington, DC. The Subcommittee will review the Integrated Plant Safety Analysis Report (IP SAR) for San Onofre.

Long Range Plan for NRC, May 16, 1985, Washington, DC. The Subcommittee will continue to develop a long range plan for the NRC. Topics to be discussed are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Combined Metal Components and Structural Engineering, May 23, and 24, 1985, Washington, DC. The

Subcommittee will discuss modifications to General Design Criterion-4 that will account for the use of the leak-before-break concept. Status of the NRC Piping Review Committee reports will also be discussed at this meeting.

State of Nuclear Power Safety, May 31, 1985, Washington, DC. The Subcommittee will begin to discuss reactor safety problems.

Qualification Program for Safety-Related Equipment, Date to be determined (May, tentative), Washington, DC. The Subcommittee will discuss the NRC Staff's resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants." The Subcommittee will also discuss valve operability with the NRC Staff and industry.

Regulatory Activities, June 4, 1985, Washington, DC. The Subcommittee will review the following: (1) Proposed General Revisions to Appendix J to 10 CFR Part 50, "Leak Tests for Primary and Secondary Containments of Light-Water Cooled Nuclear Power Plants," (2) Draft Regulatory Guide on "Containment Leakage Testing," (3) Regulatory Guide 1.23, Rev. 1, "Meteorological Measurement Programs for Nuclear Power Plants," and (4) proposed Regulatory Guide (Task No. IC 127-5), "Criteria for Programmable Digital Computer Systems Software in Safety-Related Systems of Nuclear Power Plants."

Safety Research Program, June 5, 1985, Washington, DC. The Subcommittee will discuss the updated information (possibly the Budget Review Group mark) on the proposed NRC Safety Research Program and budget for FY 1987. Also, it will discuss a draft ACRS report to the Commission on the NRC Safety Research Program and budget for FY 1987.

Emergency Core Cooling Systems, June 12 and 13, 1985, Alliance, OH. The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W IST Program. A visit to the MIST facility is also planned.

Air Systems, June 17, 1985, Washington, DC. The Subcommittee will review the NRC Staff's Supplement to the Control Room Habitability Working Group Report, June 1984. The NRC Staff's survey of NTOL and OR control rooms is discussed in this Supplement. Also, the Subcommittee will review the Staff's final report on "Safety Implications Associated with In-Plant Pressurized Gas Storage and Distribution Systems in Nuclear Power Plants."

Class 9 Accidents, June 19, 1985, Washington, DC. The Subcommittee will

continue its review of draft NUREG-0956, "Source Term Reassessment."

Beaver Valley 2, June 20 and 21, 1985, Pittsburgh, PA. The Subcommittee will review the Duquesne Light Company's application for an operating license for Beaver Valley 2.

River Bend 1 and 2, Date and location to be determined (early June). The Subcommittee will continue its review of Gulf States Utilities' application for an operating license for the River Bend Nuclear Power Plant Units 1 and 2.

Seismic Design of Piping, Date to be determined (June, tentative), Washington, DC. The Subcommittee will review draft reports issued by the NRC Piping Review Committee on dynamic loads and other load combinations and seismic design requirements of piping systems.

Metal Components and Seismic Design of Piping, Date to be determined (June/July, tentative), Washington, DC. The Subcommittee will review the NRC Piping Review Committee's overall recommendations on piping system design and its implementation.

Quality and Quality Assurance in Design and Construction, July 5, 1985, Washington, DC. The Subcommittee will: (1) Review the final rule on "The Important to Safety Issue," and (2) be briefed on the "NRC Quality Assurance Program Implementation Plan."

Long Range Plan for NRC, July 10, 1985, Washington, DC. The Subcommittee will continue to develop a long range plan for the NRC. Topics to be discussed are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Emergency Core Cooling Systems, Date to be determined (July), Washington, DC. The Subcommittee will continue its review of the proposed revision to Appendix K of 10 CFR 50.46.

Long Range Plan for NRC, August 7, 1985, Washington, DC. The Subcommittee will continue to develop a long range plan for the NRC. Topics to be discussed are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Emergency Core Cooling Systems, Date to be determined (summer), Palo Alto, CA. The Subcommittee will continue its review of the joint NRC/B&WOG/EPRI/B&W IST Program. A visit is planned to the EPRI-sponsored Stanford Research Institute facilities supporting this Program.

Long Range Plan for NRC, September 11, 1985, Washington, DC. The Subcommittee will continue to develop a

long range plan for the NRC. Topics to be discussed are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Long Range Plan for NRC, October 9, 1985, Washington, DC. The Subcommittee will continue to develop a long range plan for the NRC. Topics to be discussed are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Combined Reliability and Probabilistic Assessment and Millstone 3, Date and location to be determined. The Subcommittee will review the probabilistic risk assessment for Millstone 3.

Emergency Core Cooling Systems, Date to be determined, Washington, DC. The Subcommittee will review the NRC Thermal Hydraulic Research Program with emphasis on the code assessment program.

CESSAR II, Date and location to be determined, Washington, DC. The Subcommittee will continue its review of CESSAR II for a Final Design Approval applicable to future plants.

Combined Reactor Radiological Effects and Fire Protection, Date to be determined, Washington, DC. The Subcommittee will discuss the use of hydrogen addition in BWRs to inhibit stress corrosion regarding increased N-16 production and fire hazards.

Maintenance Practices and Procedures, Date to be determined, Washington, DC. The Subcommittee will review the maintenance program plan.

ACRS Full Committee Meeting

May 9-11, 1985: Items are tentatively scheduled.

A. Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees—Discuss proposed NRC rule on emergency preparedness for fuel cycle and other radioactive material licensees.

B. General Electric Standard Safety Analysis Report—Discuss aspects of specific issues such as interface requirements and seismic issues.

C. Recent Events at Operating Plants—Hear a report regarding and discuss recent operating events at nuclear power plants.

D. Emergency Preparedness—Discuss consideration of earthquakes and other low frequency natural phenomena in the emergency planning and preparedness for production and utilization facilities.

***E. Quantitative Safety Goals**—Discuss NRC Staff evaluation of two-year trial period and plan for implementation of the proposed NRC quantitative safety goals.

***F. Future ACRS Activities**—Discuss anticipated ACRS activities including preparation of the ACRS report to the NRC regarding the proposed safety research program and budget for FY-1987 and proposed review of scram systems for Westinghouse PWR nuclear plants.

***G. EPA Standards for High-Level Radioactive Waste Repositories**—Discuss EPA environmental standards for management and disposal of high-level radioactive wastes in geologic repositories.

***H. Prioritization of Unresolved Generic Issues**—Discuss proposed priorities for a new list of approximately 23 unresolved generic safety related issues.

***I. ACRS Subcommittee Activities**—Discuss safety related activities of designated ACRS subcommittees including hydrodynamic effects in BWR dynamic containments and the effects of insulation debris on containment sump performance following a LOCA.

***J. Meeting with NRC Commissioners**—Discuss ACRS report regarding the roles of the ACRS in review and evaluation of the proposed DOE program for management and disposal of radioactive wastes.

***K. Activities of ACRS Members**—Hear and discuss reports of ACRS members regarding activities as individual ACRS members.

***L. ACRS Procedures and Practices**—Proposed changes to ACRS Bylaws will be considered with respect to the conduct of ACRS members as part of the collegial body and as individuals.

June 6-8, 1985—Agenda to be announced.

July 11-13, 1985—Agenda to be announced.

Dated: April 18, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-9780 Filed 4-22-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on May 6, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, May 6, 1985—1:00 p.m. until the conclusion of business

The Subcommittee will discuss recent operating occurrences.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 18, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-9777 Filed 4-22-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safeguards and Security; Meeting

The ACRS Subcommittee on Safeguards and Security will hold a meeting on May 7, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

Portions of the meeting will be open to public attendance, however, those

portions that deal with confidential Safeguards Information will be closed to the public.

The agenda for the subject meeting shall be as follows:

Tuesday, May 7, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will review the potential consequences of sabotage at nonpower reactors, be briefed by NMSS on sabotage protection at power reactors, and hear how the NRC Staff reviews and evaluates licensees' security plans.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John Schiffgens (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before this scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 18, 1985.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 85-9779 Filed 4-22-85; 8:45 am]

BILLING CODE 7590-01-M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations: Monthly Notice

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly which was published on March 27, 1985 (50 FR 12132) through April 15, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means the operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Docketing and Service Branch.

By May 23, 1985; the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factor: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a

supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity or a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700).

The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Branch Chief): Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington D.C., and at the local public document room for the particular facility involved.

Arkansas Power and Light Company,
Docket No. 50-313, Arkansas Nuclear
One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 1, 1985.

Description of amendment request:
The amendment would add Technical Specifications to reflect specific time intervals in terms of Effective Full Power Days (EFPD) for Axial Power Shaping Rod Insertion Limits.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (ii), an amendment involving a change that constitutes an additional limitation, restriction, of control not presently included in the Technical Specifications. The proposed Technical Specification modifications impose additional limitations, restrictions and controls and, therefore, fall within this example. Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the

Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington DC 20036.

NRC Branch Chief: John F. Stolz.

Baltimore Gas and Electric Company,
Docket Nos. 50-317 and 50-318, Calvert
Cliffs Nuclear Power Plant, Unit Nos. 1
and 2, Calvert County, Maryland

Date of amendment request: January 31, 1985.

Description of amendment request:
The proposed amendment would change the Unit 1 and Unit 2 Technical Specifications (TS) to reflect clarification and increased flexibility for determination of reactor coolant system leakage as specified in TS 3/4.4.6.1, "Leakage Detection Systems" and TS 3/4.4.6.2, "Reactor Coolant System Leakage."

In reviewing the above proposed changes to the TS, we have determined that certain changes in the proposed TS are required. These changes were discussed with and agreed to by the licensee.

Basis for proposed no significant hazards consideration determination:
Technical Specification 3/4.4.6.1 provides operability and surveillance requirements for three instrumentation systems which will detect reactor coolant system leakage. Two of the instrumentation systems specified in 3.4.6.1, the containment particulate radioactivity monitoring (PRM) system and the containment atmospheric gaseous radioactivity monitoring (GRM) system, are not completely independent in that they both share the same sample pump. The containment sump level alarm system, the third leakage monitoring system addressed in TS 3/4.4.6.1, is independent of the PRM and GRM systems.

In the past, TS 3.4.6.1 has caused difficulty with regard to interpretation. This difficulty is caused by the "action" statement which is applicable when one leak detection system is inoperable but which also requires remedial action to be taken when two systems (the GRM and/or the PRM) are inoperable. The licensee has proposed a change to TS 3.4.6.1 to correct this ambiguity. The proposed change would make the existing action statement the first of a two-part requirement. This first part

would be applicable, unambiguously, when only one leakage detection system is inoperable by changing the phrase "... when the required gaseous and/or particulate radioactivity monitoring system is inoperable ..." to "... when either the required gaseous or particulate radioactivity monitoring system is inoperable ...". The new second part of the action statement would be unambiguously applicable when two leakage detection systems are inoperable. This action statement requires that the existing remedial action be taken, obtaining and analyzing containment atmospheric grab samples at least once per 24 hours, and also that a reactor coolant system water inventory balance be undertaken every 24 hours. The reactor coolant system water inventory balance is an approved leak detection methodology that is currently required to be performed every 72 hours by TS 4.4.6.2c.

Based upon our evaluation, we conclude that the consequences of accidents already evaluated will not be more severe nor will new or different types of accidents be created. This is because at least two approved means of reactor coolant system leak detection will be required to be operable as is presently the case is TS 3.4.6.1. Moreover, numerous other systems and means for leak detection are described and discussed in Section 4.3 of the Updated FSAR and are used by reactor operators for leak detection purposes. They include: Containment Pressure and Temperature Indication, Pressurizer Pressure and Level Indication and Alarm, Containment Area Radiation Monitor Indication and Alarm, Containment Humidity Indicators, Reactor Coolant Drain Tank Level Indication, and Reactor Coolant Make-up Water Flow Integrators. The proposed TS does not increase the probability of accidents or reduce any safety margins since no changes in design or operating modes of the leak detection systems are involved. Consequently, the Commission proposes to determine that the proposed changes to TS 3.4.6.1 involves no significant hazards considerations.

Finally, the licensee has requested changes to TS 4.4.6.2 as follows:

- Surveillance Requirement (SR) 4.4.6.2a which requires monitoring the containment atmosphere 12 hours with the PRM would be modified to also permit monitoring with the GRM or grab samples.
- SR 4.4.6.2b which requires monitoring containment sump discharge every 12 hours using the containment sump level alarm system would be

modified to suspend this requirement when the containment sump level alarm system is inoperable.

• SR 4.4.6.2c which requires a reactor coolant system water inventory balance at least once per 72 hours would be modified to require this balance every 24 hours when used as an alternate leak detection method per TS 3.4.6.1.

On April 6, 1983 the NRC published guidance in the *Federal Register* (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. One such example (i) involves changes of "A purely administrative change to technical specifications for example, a change to achieve consistency through the technical specifications. . . ." The proposed changes to TS 4.4.6.2 are required to achieve consistency with existing and proposed requirements of TS 3.4.6.1. Accordingly, the Commission proposes to determine that the proposed changes to TS 4.4.6.2 involve no significant hazards considerations.

Local Public Document Room
Location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw Pittman, Potts and Trowbridge, 1800 M. Street, NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Carolina Power & Light Company,
Docket Nos. 50-325 and 50-324,
Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment:
February 13, 1985, as supplemented
April 4, 1985.

Description of amendment requests:
The proposed Technical Specification (TS) changes request postponement of one full flow test of the core spray pumps until the primary containment suppression chamber is restored to its operational condition.

The licensee is presently planning to shutdown the Brunswick Steam Electric Plant, Unit 1 on or before March 31, 1985 for a 31 week outage (plus six weeks for contingencies) to refuel, perform maintenance work and modify the Mark I torus. In conjunction with the Mark I torus modifications, the suppression chamber will be drained and, therefore, it will not be possible to perform the full flow surveillance test of the Core Spray System (CSS) wherein water is recirculated into the suppression pool. In the April 4, 1985 letter the licensee indicated that the fuel would be removed from the core about May 30, 1985 and replaced in early August 1985.

During that period of time the core spray system is not needed.

This requirement will last be performed on approximately April 1, 1985. Due to the modifications being made to the suppression pool the maximum permissible interval between full flow tests will be exceeded before the next test. The licensee is, therefore, requesting a one time extension to the maximum surveillance interval during the upcoming refueling outage until within 48 hours after restoration of the suppression chamber to operable status, but in any case no later than October 30, 1985. Based on the present outage schedule, CP&L plans to restore the suppression chamber to operable status and perform Surveillance Requirement 4.5.3.1.c.1 by approximately August 29, 1985. This will extend the surveillance interval from the present maximum 115 days to approximately 150 days. The October 30, 1985 date allows for contingencies in the completion of modification to the suppression pool making the total allowable surveillance interval 212 days.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance in the form of examples of amendments that are not considered likely to involve a significant hazards consideration (48 FR 14870). The licensee's February 13, 1985 submittal included a discussion of the proposed action with respect to the no significant hazards consideration. The licensee also provided a discussion regarding the proposed Technical Specification (TS) change.

The licensee has determined and the NRC staff concurs that extending the surveillance interval, for a full flow test of the Core Spray System, from 92 days to a total allowable surveillance interval of 212 days does not constitute a significant reduction in the verification of operability or the availability of this system for the following reasons:

1. Normally, in the refueling operation (OPERATIONAL CONDITION 5), the CSS is not required to be operable (and thus to have surveillance testing performed), if all of the following conditions are met: (a) The reactor vessel head is removed, (b) The refueling cavity is flooded, and (c) The spent fuel gates are removed.
2. The CSS consists of two independent subsystems, each with 100% capacity, thus providing a redundant safety system subsystem.
3. Redundant systems that will be available to supply core reflood capability include the condensate system and the service water injection

system, with a small volume available from the control rod drive system.

4. Surveillance is being performed every 12 hours to verify that the CSS has an operable water source (TS 4.5.3.1.a). Surveillance is performed every 31 days to verify that the CSS is filled with water (TS 4.5.3.1.b.1). Surveillance is performed every 31 days to verify that all valves in the CSS flow path are properly aligned (TS 4.5.3.1.b.2).

5. For a portion of the outage (about 8 or 9 weeks) the fuel will not be in the vessel. During this time the CSS is not needed.

The proposed change pertaining to TS 4.5.3.1.c.1 represents a relaxation in the surveillance requirements. However, adequate precautions have been taken to ensure the availability of other means of cooling for the reactor core when fuel is in the vessel. Based on the foregoing discussion, the staff concludes that the results of this change, would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the Commission proposed to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room
Location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company,
Docket Nos. 50-325 and 50-324,
Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment:
March 6, 1985.

Description of amendment request:
The proposed amendment to the Brunswick Unit 1 Technical Specifications (TS) would revise TS Tables 3.3.5.3-1 and 4.3.5.3-1 (Accident Monitoring Instrumentation) and Section 3/4.6.2.1 (Suppression Chamber) to incorporate the inclusion of a suppression pool temperature monitoring system (SPTMS) to meet the acceptance criteria of NUREG-0661, Appendix A. In addition, the channel check for item 4.3.5.3-1.4 is being changed from monthly to daily to provide consistency with TS 4.6.2.1.2.1.

TS Section 3/4.6.2.1 and 3/4.6.4.1 (Drywell-Suppression Chamber Vacuum Breakers) have been modified to more closely conform to the guidance of the BWR-4 Standard Technical Specifications (STS), NUREG-0123. A similar revision was issued for Brunswick Unit 2 on September 22, 1984. Brunswick Unit 2 Surveillance Requirements are being revised at this time to eliminate redundancy.

The requested TS change reflects the new suppression pool temperature monitoring system being installed on Brunswick Unit 1 during the upcoming refueling outage. This system consists of 24 Class 1E resistance temperature detectors (RTDs) installed about the torus at designated locations to provide accurate measurement of the average pool water temperature. These new RTDs are split into two totally independent channels consisting of 12 RTDs per channel. All new RTDs are Class 1E qualified, seismically analyzed, and the two suppression pool temperature monitoring divisions meet the acceptance criteria of Regulatory Guide 1.97, NUREG-0661, and NUREG-0783. The new suppression pool temperature monitoring system also serves as the accident monitoring instrumentation for suppression chamber water temperature. Tables 3.3.5.3-1 and 4.3.5.3-1 have been changed to reflect the new instrument numbers. In addition, the channel check for Item 4.3.5.3-1.4 is currently performed on a monthly basis. This requirement is being changed to daily in order to be consistent with TS 4.6.2.1.d.1. A similar change is being made in the Brunswick Unit 2 TS to provide consistency. Also, a footnote has been added in Table 3.3.5.3-1 to ensure that the dual function of the system is apparent to operations personnel.

TS Section 3/4.6.2 has been rewritten to make the section more closely conform to the format of the STS. A Limiting Condition for Operation (LCO) and new action items have been added to ensure appropriate requirements exist for various plant conditions. The LCO and Surveillance Requirements pertaining to suppression chamber leakage have been moved from Section 3/4.6.4 to Section 3/4.6.2, consistent with guidance of the STS.

Surveillance Requirement 4.6.2.1.b.2.b contains a 24-hour time restriction for suppression chamber temperature in excess of 95 °F while in Operating Conditions 1 and 2. This requirement is also covered by TS Section 3/4.6.2, Action Statement b. Restating the 24-hour restriction is redundant and may mislead the operator. Therefore, the time

restriction has been removed from Surveillance Requirement 4.6.2.1.b.2.b in the Brunswick Unit 2 TS.

The above proposed modifications are submitted in response to the staff request dated March 19, 1984 which included a Safety Evaluation of the Mark I Long Term Containment Program for the Brunswick facilities. In that Safety Evaluation the staff concluded that containment modifications made have restored the original design safety margin to the Mark I Containment at the Brunswick plant.

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples published in the Federal Register on April 6, 1983 (48 FR 14870). Examples of an amendment likely to involve no significant hazards consideration include: (i) A purely administrative change; and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The new suppression pool temperature monitoring system/accident monitoring instrumentation is subject to LCOs, actions, and surveillances, specified in Section 3/4.6.2 during normal operation, which were not previously required and, therefore, constitute additional limitations. The staff has reviewed the proposed change as discussed above and has concluded that this proposed change falls within the scope of example (ii). Similarly, revision of channel check 4.3.5.3-1.4 from monthly to daily also provides additional limitations. The reformatting of Sections 3/4.6.2 and 3/4.6.4 and the changing of instrument numbers in Tables 3.3.5.3-1 and 4.3.5.3-1 represent administrative changes, which fall within the scope of example (i). Therefore, the staff proposes to determine that the proposed amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: March 18, 1985.

Description of amendment request:

This proposed amendment would revise the Technical Specifications (TS) for the Brunswick Steam Electric Plant, Unit 1 (Brunswick-1). The proposed revision to the TS Tables 3.3.3-1, 3.3.2-2, and 4.3.3-1 reflects modifications to the Automatic Depressurization System (ADS) by removing the high pressure trip from the logic sequence and adding a manual inhibit switch thus eliminating the need for manual actuation to ensure core coverage. The requested TS change removes the ADS high drywell pressure instruments and adds manual inhibit switches to ADS logic in TS 3.3.3 and 4.3.3.

This modification is a result of TMI Action item II.K.3.18. A BWR Owners Group (BWROG) study of alternatives to the present ADS actuation logic identified modifications to eliminate the need for manual actuation to ensure core coverage in the event of certain accident sequences. The proposed TS change is the second option outlined in the BWROG study and is one of the two options indicated to be an acceptable method of complying with TMI Action item II.K.3.18 by NRC letter dated June 3, 1983. The staff position stated in the June 3, 1983 letter that the ADS system actuation logic should be modified to eliminate the need for manual activation to assure adequate core cooling. The proposed reduction of logic devices will increase ADS reliability and will provide additional assurance of adequate core cooling by further automating reactor pressure vessel depressurization for isolations and stuck open relief valve events, while satisfying design concerns associated with anticipated transients without scram.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement."

Based on the above discussion the staff concludes that the proposed amendment is consistent with the staff position. Further, the proposed amendment provides additional assurance of adequate core cooling by extending the operation of the ADS to encompass additional accident and transient conditions which do not

directly produce a high drywell pressure signal.

Example (ii) applies to the added requirements for automating reactor pressure vessel depressurization for isolations and stuck open relief valve events, while satisfying design concerns associated with anticipated transients without scram. Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room
location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company,
Docket Nos. 50-373 & 50-374, La Salle County Station, Units 1 & 2, La Salle County, Illinois

Date of amendment request: February 21, 1985 as supplemented by letter dated March 5, 1985.

Description of amendment requests:
The proposed amendments to Operating License NPF-11 and Operating License NPF-18 would revise the La Salle, Units 1 and 2 Technical Specifications to reflect the changes in the revised section of 10 CFR 50.72, and a new section, 10 CFR 50.73, both of which became effective on January 1, 1984. The revised §50.72 modifies the immediate notification requirements for operating nuclear reactors and § 50.73 provides for a revised Licensee Event Report System.

The major proposed changes are in the "Definitions" and "Administrative Control" sections of the Technical Specifications. The definition "Reportable Occurrence" is replaced by a new term, "Reportable Events."

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazard consideration include example (vii)—a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The changes proposed in the application for

amendments are fully encompassed by this example because the licenses are being changed solely to conform with a change in the regulations. On this basis, the staff proposed to determine that this amendment involves no significant hazards considerations. Additionally, the licensee was requested by the NRC staff to make these administrative changes in Generic Letter No. 83-43, "Reporting Requirements of 10 CFR Part 50, §§ 50.72 and 50.73, and Standard Technical Specification," dated December 19, 1983.

Local Public Document Room
location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Commonwealth Edison Company,
Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of amendment request: February 4, 1985.

Description of amendment request:
This amendment would (1) extend the maximum average planar linear heat generation rate (MAPLHGR) curve for fuel types now in the core from 30,000 megawatt days per short ton (MWD/ST) to 45,000 MWD/ST so as to extend the protective thermal limits on fuel of these types to higher values of planar average exposure and thereby extend the useful life of the fuel, and (2) incorporate into the Technical Specifications MAPLHGR curves for two new fuel types that will be loaded into the core for use in the upcoming Operating Cycle 8.

Basis for proposed no significant hazards consideration determination:
The licensee has evaluated the proposed Technical Specification amendment and has determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration set forth in 10 CFR 50.92(c), operation of Quad Cities Unit 2 in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The amendment involves restrictions on the reactor power distribution during normal operation which of itself cannot initiate an accident and therefore does not increase the probability of an accident, and

(b) These restrictions on power distribution are based on a reanalysis of accidents in accordance with NRC-approved methods, and are specific to

ensure that the consequences of LOCA remain within the existing accident criteria established for Quad Cities in the FSAR.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated for the same reason as (1)a. above and

(3) Involve a significant reduction in the margin of safety since the amendments are specifically intended to ensure that the 10 CFR 50.46 ECCS criteria continue to be protected during operation.

With regard to the second part of the proposed amendment particularly, i.e., incorporation in the Technical Specifications MAPLHGR curves for two new fuel types for use in the upcoming Operating Cycle 8, the Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing specific examples (48 FR 14870). Examples of actions likely to involve no significant hazards include: "(iii) A change resulting from a nuclear reactor core reloading if fuel assemblies are not significantly different from those previously found acceptable to the NRC for a previous core at the facility in question. Each of the two new fuel types is a barrier-type fuel having properties similar to fuel already in the core. Each has the same physical configuration, and similar material composition and isotopic enrichment as fuel already analyzed and approved for previous reloads, so use of the new fuel types involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards considerations determinations and, based on this review, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: Moline Public Library, 504 17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company,
Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: January 30, 1985.

Description of amendments request:
The amendments would: (a) Permit full pressure testing of the containment in

accordance with 10 CFR 50, Appendix J as requested by NRC—Region III; (b) add containment air lock testing; (c) reduce the number of tendons to be included in surveillance requirements in accordance with Regulatory Guide 1.35, Revision 2; and (d) remove obsolete containment liner surveillance requirements.

Basis for proposed no significant hazards consideration determinations: The Commission's examples of actions involving no significant hazards considerations (48 FR 14870) include: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement." The changes identified as (a) and (b) above are encompassed by this example in that the proposed changes add surveillance requirements not contained in the current technical specifications.

The Commission's examples of actions involving no significant hazards consideration include: "(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated." The change identified as (c) above fits this example in that successful tests at years 1, 3 and 5 of reactor operation demonstrated acceptable performance of the containment tendons. A reduction in the number of tendons to be inspected following the successful tests at years 1, 3 and 5 is in accordance with Regulatory Guide 1.35, Revision 2.

The containment liner surveillance program was established to demonstrate the initial post-construction integrity of the liner. The Technical Specification 4.10.4 states that if a successful test sequence is performed, the program shall be discontinued. The licensee has performed satisfactory test series and has, accordingly, discontinued the liner surveillance program. This amendment would remove the no longer applicable text from the Technical Specification. The Commission's examples of actions involving no significant hazards consideration include: "(i) A purely administrative change to technical specifications . . ." The change identified as (d) above fits this example since the LCO and associated surveillance no longer apply and the purely administrative change is being made to remove the no longer applicable section from technical specifications.

Based on the above, the Commission proposes to determine that the proposed amendments involves no significant hazards consideration.

Local Public Document Room location: Zion-Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York. Date of amendment request: February 14, 1983, as supplemented February 28, 1985.

Description of amendment request: This submittal supplements the request for amendment dated February 14, 1983 which was noticed in the *Federal Register* on August 23, 1983 (49 FR 38395) and September 21, 1983 (49 FR 43134). The proposed Technical Specification revision would modify portions of Consolidated Edison's February 14, 1983 license amendment application to reflect revised pressure/temperature limitations for reactor coolant system heatup cooldown, hydrostatic test and low temperature overpressure protection applicable through fifteen effective full power years of reactor operation. The proposed revision to the Technical Specifications also increases the number of reactor coolant pumps that are required to be operating when the reactor is at hot shutdown and above 350°F. This change is requested to achieve consistency between the safety analysis for the Uncontrolled Rod Withdrawal From Subcritical concerning the number of reactor coolant pumps in operation.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revisions to the heatup, cooldown, hydrostatic test pressure-temperature limitations and low temperature overpressure protection requirements will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in margin of safety. The proposed revision reflects conservative values of the Reference Nil-Ductility Transition Temperature (RT_{NDT}) for the reactor vessel and provides a margin of safety which complies with the fracture toughness requirements of 10 CFR Part 50 Appendix G.

The proposed changes regarding the minimum number of reactor coolant pumps required to be operating when at hot shutdown but above 350°F and the addition of action statements in Table 3.1.A-1 are consistent with example (ii) of the Commission's guidance concerning the application standards for determining whether a significant hazards consideration exists (48 FR 14870). Example (ii) identifies a change that constitutes an additional limitation restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement. The proposed change regarding the number of operating reactor coolant pumps increases the minimum number of reactor coolant pumps required to be operating during specified plant conditions constituting an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed changes to Table 3.1.A-1 provide new explicit action to be taken if no pumps are operating for longer than the one hour permitted. This also constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications.

Based on the above, the staff proposes to determine that the requested action would involve no significant hazards considerations.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Thomas J. Farrelly, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consumers Power Company Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 29, 1985.

Description of amendment request: The proposed amendment would delete Technical Specification 4.13 that requires neutron noise monitoring to confirm that the modification made in 1974 to clamp the core barrel in place was adequate.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (iv) in this guidance is if demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet

demonstrated can be made, it can be considered not likely to involve significant hazards considerations. This proposed change is based on the fact that during plant operation over the past 10 years, surveillance data has been taken and analyzed on a weekly basis. The measured values have been predictable and consistently far below the established limits for vibration. In addition, the recently completed 10 year Inservice Inspection of the reactor vessel and internals showed no additional evidence of wear caused by vibrations. Consequently, the modification which increased the core barrel clamping force has been proven effective over a number of years and core cycles, and the surveillance program can prudently be eliminated.

Therefore, because this amendment request involves a change of the type specified in example (iv) of the Commission's guidance, the staff proposed to determine that the proposed change would not involve a significant hazards consideration.

Local Public Document Room
location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49007.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: January 11, 1985.

Description of amendment request: This amendment would modify the Technical Specifications to delete the definition for "cumulative downtime" from the Definitions and Bases sections.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (i), an amendment involving a purely administrative change to Technical Specifications. The term "cumulative downtime" is not used in the body of the Technical Specifications. The removal of the definition of this term from the Definition section and removal of the term from the Bases section is a purely administrative change. Therefore, since the application for amendment involves a proposed

change that is similar to an example for which no significant hazards consideration exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room
Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for Licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: January 17, 1985.

Description of amendment request: This amendment would modify the Technical Specifications to reflect changes in fire detection as a result of control room and "Appendix R" modifications. Specifically, the number of fire detectors and the number of minimum operable required fire detectors cited in Technical Specification Table 3.13-1 are changed for the Control Room (Unit 1) and its peripheral rooms. In addition, similar information is being provided for the Low Pressure Coolant Injection Inverter Room which is being added to the aforementioned Technical Specification table. The number of minimum operable required fire detectors for the Control Room (Unit 2), as listed in Hatch Unit 1 Technical Specification Table 3.13-1, is also being changed to reflect plant conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (ii), an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The changes involve either new requirements not presently in the Technical Specifications or increase the minimum number of fire detectors required to be operable. Therefore, the modifications impose additional limitations, restrictions and controls and fall within this example.

Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist,

the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room
Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for Licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: December 21, 1983, as supplemented April 16, 1984.

Description of amendment request: The amendments would modify the Technical Specifications for the post-accident oxygen and hydrogen monitoring instruments for Unit 1 to: (1) Correct a typographical error in the listed instrument range, (2) delete permission to continue to operate for 30 days when a parameter is reduced to one indication and to continue to operate for 7 days when a parameter is not indicated in the control room, (3) increase the minimum instrument calibration frequency from 6 months to 3 months and (4) decrease the minimum instrument check frequency from every shift to monthly.

The amendments would also modify the Technical Specifications for these instruments for both Hatch Units 1 and 2 to add a requirement that the instrumentation be operable with continuous sampling capability within 30 minutes of an Emergency Core Cooling System (ECCS) actuation during a Loss of Coolant Accident (LOCA).

Basis for proposed no significant hazards consideration determination: The Commission provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is (ii), an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Proposed Unit 1 Technical Specification modifications (2) and (3) and the addition of the requirement for both Hatch Units 1 and 2 Technical Specifications for sampling capability within 30 minutes of an ECCS action impose additional limitations,

restrictions and controls and therefore fall within this example.

Another example of actions involving no significant hazards considerations is (i), an amendment involving a purely administrative change to the Technical Specifications, such as a change to achieve consistency throughout the Technical Specifications. Proposed Unit 1 Technical Specification modification (1) is such an action as it is only an administrative change, neither increasing nor lessening previous requirements.

Still another such example is (vi), a change which may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Proposed Unit 1 Technical Specification modification (4) decreases the instrument check frequency from every shift to monthly. The licensee has stated that experience has shown frequent operation of hydrogen and oxygen analyzers, especially during the required checks, tends to lower the reliability of the equipment. The licensee has also stated that the instrument vendor has recommended a monthly check as being the optimum frequency for maintaining maximum equipment operability. The Commission's staff agrees that frequent operation tends to lower reliability and concludes that, on balance, the change in the safety margin will be small and that the change is clearly within acceptable criteria as specified in the Standard Review Plan.

Therefore, since the application for amendments involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Applying County, Georgia

Date of amendment request: February 15, 1985.

Description of amendment request: These amendments would modify the Technical Specifications to remove provisions that allow bypass of the high drywell pressure scram signal for the purpose of containment inerting and de-inerting.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (ii), an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications to delete the current allowance to bypass the high drywell pressure scram signal, in effect, impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendments involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 11, 1985.

Description of amendment request: Request approval for Appendix A Technical Specifications (TSs) changes pertaining to Sections 3.13 and 4.13, Accident Monitoring Instrumentation, which are proposed to (1) clarify the existing limiting conditions for operations in Table 3.13.1 on relief valve position indicators, (2) add limiting conditions for operation and surveillance requirements to the TSs on the following accident monitoring instrumentation: torus water level monitor, drywell pressure monitor and drywell hydrogen monitor, and (3) revise the existing limiting conditions for operation for the relief and safety valve position indicators not in Table 3.13.1 to have these TSs agree with those

proposed for the accident monitoring instrumentation listed in (2).

Basis for proposed no significant hazards consideration determination: The licensee has first proposed a change to the existing limiting conditions for operation on the minimum channels operable in Table 3.13.1 for relief valve position indicators. The licensee states that this change is to clarify the TSs such that either the single acoustic monitor per valve or the single thermocouple per valve may be the minimum channel required to be operable instead of only the single acoustic monitor per valve in the existing TSs. This is a relaxation of requirements in the existing TSs; however, because these indicators are in addition to the reactor water level instrumentation, the staff concludes upon review that this proposed change does not involve a significant increase in the probability or the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any previously evaluated and does not a significant reduction in a margin of safety. Based on this, the staff proposes to determine for this proposed change in the amendment application that the requested action involves no significant hazards consideration.

The licensee has also proposed to (1) add limiting conditions for operation and surveillance requirements to the TSs on the following accident monitoring instrumentation: torus water level monitor, drywell pressure monitor, and drywell hydrogen monitor and (2) revise the existing limiting conditions for operation for the relief and safety valve position indicators to have these TSs agree with those proposed for the new accident monitoring instrumentation listed in (1). The new requirements, which add additional accident monitoring instrumentation to the TSs, are an additional limitation, restriction or control not presently included in the TSs. The revisions to existing TSs on the relief and safety valve position indicators are an administrative change to achieve consistency throughout the TSs which the staff concludes are not a relaxation of the existing TSs and may clarify the requirements in the TSs. Therefore, for the latter two proposed changes, the licensee has proposed changes to Section 3.13 and 4.13, Accident Monitoring Instrumentation, of the Appendix A TSs which are (1) administrative changes to clarify existing TSs and to provide consistency in the limiting conditions for operation among the proposed and existing TSs

and (2) additional requirements being added to the existing TSs. These additional requirements are to incorporate the requirements of NUREG-0737 on accident monitoring instrumentation as requested by NRC in Generic Letter 83-36 dated November 1, 1983. NUREG-0737 Technical Specifications. The Commission has provided examples of license amendments that are not likely to involve significant hazards considerations (48 FR 14870): (i) A purely administrative change to the TSs to achieve consistency and clarify throughout the TSs and (ii) a change that constitutes an additional limitation, restriction or control not presently included in the TSs. Because the latter two proposed changes requested in this amendment application fall within these examples, the staff proposes to determine that the requested action on these two proposed changes also involves no significant hazards consideration.

Therefore, based on the above, the staff proposes to determine that all the proposed changes in this amendment application involve no significant hazards consideration.

Local Public Document Room
location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania.

Date of amendment request: September 21, 1976, as revised March 5, 1985.

Description of amendment request: The licensee's March 5, 1985, submittal of Technical Specification (TS) Change Request No. 38, Rev. 1, replaces the earlier submittal in its entirety. The proposed amendment would define the lift conditions and allowable areas of travel for movement of heavy loads in the TMI-1 fuel handling building. This amendment would make the TSs consistent with resolution of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants—Resolution of TAP A-36."

Basis for proposed no significant hazards consideration determination: The proposed amendment is considered to be in the same category as example (ii) of amendments that are not likely to involve a significant hazards consideration (48 FR 14870), namely, a

change that constitutes additional limitations, restrictions or controls not presently included in the TSs. The proposed TSs include specific travel paths for heavy loads that are not currently included in the TSs. The proposed TSs also more precisely define acceptable lifting and moving conditions. Accordingly, the Commission's staff proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room
location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 5, 1985.

Description of amendment request: The March 5, 1985, submittal provides changes to clarify Technical Specification (TS) Change Request No. 105, Revision 1, dated February 17, 1984, which was issued as Amendment No. 106 dated March 21, 1985.

The proposed amendment would change the wording to improve the clarity to TS Section 4.17 regarding snubbers. In particular, under the existing TSs, the four large reactor coolant pump snubbers are implicitly excluded from testing requirements until a test program is developed for these snubbers as described in the Bases section. The proposed amendment would explicitly exclude these four snubbers for clarity. In addition, the title of the individual who will evaluate snubber accessibility is corrected to read "TMI-1 Manager, Radiological Controls" in accordance with the current organization chart. Also, requirements for inaccessible snubbers will be corrected to require inspection during the next shutdown which is clearly the licensee's intent, rather than during each shutdown of greater than 48 hours. Other changes are simply wording changes to improve clarity.

Basis for proposed no significant hazards consideration determination: The proposed TS changes are considered to be purely administrative because they do not change the technical content of the licensee's February 17, 1984, TS change request

which was noticed in the **Federal Register** on September 28, 1984 (49 FR 38401) and which has been issued as Amendment No. 106 dated March 21, 1985.

The proposed amendment is in the same category as Example (i) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870), namely, purely administrative changes to correct errors, change nomenclature and improve clarity. Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room
location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington D.C. 20036.

NRC Branch Chief: John F. Stolz.

Iowa Electric and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 2, 1985, as supplemented March 8, 1985.

Description of amendment request: The Iowa Electric Light and Power Company (the licensee) proposes to change the Technical Specifications for Duane Arnold Energy Center (DAEC) to eliminate the requirement for routine Operations Committee review of all procedure changes except those which are determined by an Assistant Plant Superintendent to potentially affect the safety design bases of equipment or the safety objectives of administrative controls. The proposed change will also revise the Safety Committee's responsibilities for nonsafety/related procedure changes from a review function to an audit function. The Safety Committee will audit nonsafety-related procedure changes at least once per 24 months. In addition, the word "request" is changed to "package" to reflect consistency in nomenclature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in

the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes will (1) eliminate the Operations Committee review requirements of procedure changes which are determined by the Assistant Plant Superintendent not to involve safety-related equipment design bases or safety objectives of the administrative controls, (2) revise the requirement for Safety Committee review of nonsafety-related procedure or administrative control to an audit function to be performed once every 24 months, and (3) change the word "request" to "package" to achieve a consistency in the nomenclature.

Items (1) and (2) above are relaxations of the current Technical Specifications. However, since there will be no change in the review procedures for safety-related changes or any changes to administrative controls, these changes will not affect the probabilities or consequences of previously analyzed accidents, or create a possibility of a new accident, or change any margins of safety. These changes, therefore, clearly meet the Commission's standards cited above. Item (3) is a word change intended to achieve a consistency in the nomenclature. This change clearly meets the above cited Commission standards.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room
location: Cedar Rapids Public Library,
500 First Street, SE., Cedar Rapids, Iowa
52401.

Attorney for licensee: Jack Newman,
Esquire, Harold F. Reis, Esquire,
Newman and Holtzinger, 1025
Connecticut Avenue, NW., Washington,
D.C. 20036.

NRC Branch Chief: Domenic B.
Vassallo.

Iowa Electric Light and Power Company,
Docket No. 50-331, Duane Arnold
Energy Center, Linn County, Iowa

Date of amendment request: February
20, 1985.

Description of amendment request:
The proposed amendment would revise
the Duane Arnold Energy Center
(DAEC) Facility Operating License No.
DPR-49, extending the DAEC Integrated
Plan (Plan) two years beyond the
current expiration date of May 3, 1985.
The Plan requires that the Iowa Electric
Light and Power Company (IELP/the
licensee) follow the schedule of the

DAEC plant modifications mandated or
proposed by NRC, or identified by the
licensee. The proposed amendment does
not involve changes to plant systems,
components, or Technical
Specifications.

The Integrated Plan was originally
approved in Amendment No. 91, dated
May 3, 1983. The objective of the
Integrated Plan is to integrate all
planned DAEC plant modification
schedules over a period of five years to
assure that individual tasks are
performed in an efficient and cost/
resource-effective manner.

**Basis for proposed no significant
hazards consideration determination:**
The Commission has provided guidance
concerning determination if significant
hazards considerations exist, by
providing certain standards (10 CFR
50.92(c)). A proposed amendment to an
operating license for a facility involves
no significant hazards consideration if
operation of the facility in accordance
with the proposed amendment would
not (1) involve a significant increase in
the probability or consequences of an
accident previously evaluated, or (2)
create the possibility of a new or
different kind of accident from any
accident previously evaluated, or (3)
involve a significant reduction in a
margin of safety.

The extension of the DAEC Integrated
Plan beyond its current expiration date
of May 3, 1985 is intended to assure
continuation of reliable and efficient
plant modifications intended to enhance
plant safety. Therefore, the Plan may
reduce, but not increase, the probability
or the consequences of an accident
previously evaluated, will not create a
new or different kind of accident from
any previously evaluated, and will not
involve any reduction in a margin of
safety.

Therefore, the staff has made a
proposed determination that the
application involves no significant
hazards consideration.

Local Public Document Room
location: Cedar Rapids Public Library,
500 First Street, S.E. Cedar Rapids, Iowa
52401.

Attorney for licensee: Jack Newman,
Esquire, Harold F. Reis, Esquire,
Newman and Holtzinger, 1025
Connecticut Avenue, NW., Washington,
D.C. 20036.

NRC Branch Chief: Domenic B.
Vassallo.

Maine Yankee Atomic Power Company,
Docket No. 50-309, Maine Yankee
Atomic Power Station, Wiscasset, Maine

Date of amendment request: April 25,
1984 as revised November 1, 1984.

Description of amendment request:
The application modifies an earlier
amendment request dated April 25, 1984.
A proposed no significant hazards
consideration determination was made
by the staff and notice was published in
the Federal Register on June 20, 1984 (49
FR 25350 at 25363).

This proposed amendment would
reflect plant modification to improve
low temperature over protection (LTOP).
LTOP is required to compensate for the
gradual loss of reactor vessel ductility
due to neutron irradiation. The LTOP
Technical Specifications assure that the
reactor vessel pressure is limited when
the vessel temperature is below certain
precalculated limits. This amendment
would provide for a variable set point
system for the power operated relief
valves and the use of a flow restrictor in
the High Pressure Safety Injection
System in the LTOP System. Use of the
variable setpoint and the flow restrictor
provide increased assurance that the
LTOP criteria are met while meeting
practical operational considerations.
Two redundant systems are provided to
assure against the possibility of single
failure. Additionally, in his November 1,
1984 submittal, the licensee committed
that the system setpoints are to be
independently verified to provide
additional assurance against the
possibility of operator error.

**Basis for proposed no significant
hazards consideration determination:**
This proposed change does not involve a
significant change in criteria used to
establish safety limits, limiting safety
system settings, or limiting conditions
for operation. Heatup and cooldown
limit curves remain unchanged. Reactor
vessel material properties remain tested
in accordance with Appendix G of 10
CFR Part 50. Operational limitations are
retained on the reactor coolant pumps,
power operated relief valves, and high
pressure safety injection pumps to
assure system operation meets the LTOP
criteria. It also does not involve a
significant unreviewed safety question.
Hence, the Commission proposed a
determination of no significant hazards
consideration, based on a comparison
with the examples given in 48 FR 14870.

Local Public Document Room
location: Wiscasset Public Library, High
Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritcher,
Esq., Ropes Gray, 225 Franklin Street,
Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Northeast Nuclear Energy Company,
Docket Nos. 50-245/336, Millstone
Nuclear Generating Station, Units No. 1
and 2, New London County, Connecticut

Date of amendment request: March 15, 1985.

Description of amendment request: The proposed Technical Specification change removes the Training Supervisor from the Facility Organization Charts, Figure 6.2.2 of the Millstone 1 and 2 Technical Specifications. The Training Supervisor would report to the corporate Director of Nuclear Training who in turn reports directly to the Senior Vice President instead of the Station Services Superintendent. The proposed change whereby the Training Supervisor reports to higher management is due to the implementation of a corporate Nuclear Training Department and is part of a consolidation of nuclear training responsibility under the corporate Director of Nuclear Training. This organizational change appropriately reflects the importance that a consolidated training group has in assuring the continued safe operation of the licensee's nuclear plants.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to purely administrative changes to the Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The proposed change is an organizational change that further ensures appropriate resources for the Training Supervisor to perform his function. On this basis the staff proposes to determine that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Branch Chiefs: John A. Zwolinski, Chief, ORB #5 (Unit 1); James R. Miller, Chief, ORB #3 (Unit 2).

Northeast Nuclear Energy Company et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: April 2, 1985.

Description of amendment request: The proposed changes to the Technical Specifications include changing the chlorine detection system setpoint in Technical Specification Section 3.3.3.6 from 5 ppm to 1 ppm, eliminating the date associated with Regulatory Guide 1.95 in Technical Specification Bases Section 3/4.3.6, changing the control room emergency ventilation system flow rate in Technical Specification Section 4.7.6.1 from 2000 cfm to 2500 cfm, specifying the removal efficiency of the charcoal absorber in Technical Specification Section 4.7.6.1, and inserting control room radiation monitoring information in Technical Specification Tables 3.3-6 and 4.3-3.

The proposed reduction in the chlorine concentration trip setpoint, increase to the control room emergency ventilation system air flow rate, and specification of the required efficiency of the charcoal absorbers ensure the control room remains below toxic levels during an on-site chlorine accident.

The radiation monitors are provided for isolation of the control room should a high radiation signal be detected in the HVAC air intake. This provides further protection to the control room operators. The removal of the date associated with Regulatory Guide 1.95 is proposed so as to be consistent with other Technical Specification Sections which do not show dates on their Regulatory Guides due to their constant revisions.

Basis for proposed no significant hazards consideration determination: Based on the above information, we conclude that the proposed Technical Specification changes impose more stringent surveillance requirements. The proposed technical specification revisions lower the chlorine concentration trip setpoint for the chlorine detectors, increase the required control room emergency ventilation system air flow rate to 2,500 cfm, and specifies the required efficiency of the charcoal absorber. In addition, new radiation detectors on the control room HVAC air intake are provided for isolation of the control room. These radiation detectors are not presently included in the Technical Specifications. The proposed revisions represent an improvement to a safety-related system. The elimination of the date associated with Regulatory Guide 1.95 is administrative and has no impact on the operation of the plant. Therefore, the

proposed changes would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: James R. Miller.

Northern States Power Company,
Docket Nos. 50-282 and 50-366, Prairie
Island Nuclear Generating Plant, Unit
Nos. 1 and 2, Goodhue County,
Minnesota

Date of amendment request: December 21, 1984 supplemented by letter dated March 14, 1985.

Description of amendment request: The licensee has proposed a technical specification change that would allow the insertion and withdrawal of a spent fuel shipping cask in Pool No. 1. This change would thereby eliminate the temporary restriction on the number of fuel assemblies that can be stored on site.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples of amendments not likely to involve significant hazards considerations is an amendment involving only "relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met." The licensee states relief from the operation restriction related to the movement of a spent fuel pool shipping cask over Pool No. 1 is demonstrated by meeting the four criteria imposed in NUREG-0612 Section 5.1. The licensee submitted all of the necessary documentation to support that all of the requirements of NUREG-

0612 are met. The criteria imposed by NUREG-0612 have been previously justified in a satisfactory manner by the staff prior to the issuance of NUREG-0612 and apply to the licensee proposed technical specification change. The staff believes that this amendment application is enveloped by example iv and that it does not involve a significant hazards consideration.

Local Public Document Room
location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Branch Chief: James R. Miller.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 8, 1985.

Description of amendment request: The amendment would add new technical specifications which would require the licensee to implement and maintain a program to ensure the capability to obtain and analyze a reactor coolant liquid sample and containment atmosphere sample under accident conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the technical specifications. The proposal to add new technical specifications to require a program to ensure the capability to obtain and analyze a reactor coolant liquid sample and containment atmosphere sample under accident conditions comes under example ii. Based upon the above, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room
location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Leboeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Branch Chief: James R. Miller.

Pennsylvania Power & Light Company, Docket No. 50-387 and 388, Susquehanna Steam Electric Station, Unit 1 and Unit 2, Luzerne County, Pennsylvania

Date of amendment request: February 28, 1985.

Description of amendment request: The proposed amendment to the Technical Specifications (TS) would change the onsite organization for Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 by creating two new positions, a Health Physics/Chemistry Supervisor and a Radiological Protection Supervisor.

The current organization chart in the TS (Figure 6.2.2-1) show a Health Physics Supervisor position with supporting staff. Separately, a chemistry staff reports to a Technical Supervisor position. Under the proposed amendment change the current Health Physics Supervisor Position would be upgraded to Health Physics/Chemistry Supervisor. The Chemistry Staff, would be removed from the jurisdiction of the Technical Supervisor and report to this new position. The current staff of the Health Physics Supervisor under the current TS would report directly to this new position through a new Radiological Protection Supervisor.

The individual filling Health Physics/Chemistry Supervisor position will be qualified to the requirements of ANSI N18.1-1971 as required by Specification 6.3.1, and will be a voting member of the Plant Operations Review Committee. This individual will also have the qualifications to fulfill the requirements of Regulatory Guide 1.8, September 1975, for Radiation Protection Manager.

The individual filling the Radiological Protection Supervisor position will be responsible for administering the radiological protection programs at SSES. It is expected that this individual will also meet the qualifications of Regulatory Guide 1.8, September 1975 for Radiation Protection Manager.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no consideration include: "(i) A purely administrative change to the Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature."

Because the proposed organizational change will not reduce or eliminate any functions currently covered by the Technical Specifications, is nothing

more than a minor shift in the organizational structure and is not a substantive change in function, the proposed change is purely administrative in nature and is encompassed by example (i). Therefore since the proposed amendment involves changes that are similar to examples for which no significant hazards consideration exist, the staff has made the proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room
location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18101.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: March 29, 1985, supplemented April 9, 1985.

Description of amendment request: The purpose of the proposed change to condition 2.C.(8)(b) of license NPF-27 is to provide for a revision to the schedule for full implementation of the Safety Parameter Display System (SPDS).

The SPDS is in response to the requirements of Supplement 1 to NUREG-0737 (Generic Letter 82-33, December 17, 1982). As discussed in Supplement 3 to the Safety Evaluation, the SPDS is a digital computer based system which collects, processes and displays information on a cathode ray tube (CRT) to aid the plant operators in determining the safety status of the plant. The licensee has stated that all parameters to be displayed on the SPDS displays are also displayed in the control room by fully operable hardwired analog indicators. These indicators serve as a principal source of information to the operators. They are readily accessible and are highlighted by color coding. The SPDS displays do not provide any additional direction to the operator for use of the Transient Response Implementation Plan (TRIP) procedures beyond that provided by the hardwired analog indicators. Thus, the SPDS data as displayed on the CRT screen in the control room is an aid to the operator in implementing the symptom oriented TRIP procedures. The licensee has stated that the TRIP procedures include provisions for the operator's assessment of plant status to meet the functional requirements of an

SPDS when the SPDS is not operational and that the plant operators have been trained in the use of the TRIP procedures without the SPDS available.

The verification and validation tests on the software for the General Electric designed Emergency Response Information System (ERIS) were initially planned to be complete in late 1984 to permit implementation of the SPDS by April 1, 1985 in accordance with condition 2.C.(8)(b) of license NPF-27. Subsequently it was recognized that it would be necessary to finalize certain aspects of the software data base constants during the major power ascension programs in order to complete the SPDS. This results in a need to revise the scheduled implementation of the SPDS. This results in a need to revise the scheduled implementation of the SPDS to a milestone consistent with completion of the 100% power startup testing program.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed license condition changes against the three standards specified in 10 CFR 50.92(c) as follows: (1) The failure or non-operation of the SPDS cannot adversely affect any of the systems which it monitors because qualified isolation devices have been used between the SPDS computer system and the monitored instrument loops.

The non-availability of the SPDS during power operation will not adversely affect the operators' response to transient operating conditions. All of the parameters presented on the SPDS displays are presently available in the Control Room for operator use via qualified, hardwired analog indicators (non-SPDS indicators). These indicators are conveniently located in the Control Room and are readily accessible to the reactor operator. The analog indicators are also highlighted with yellow lines to allow the operator to distinguish their location. These indicators provide the information that is needed to quickly

and reliably assess the safety status of the plant.

The Limerick emergency operating procedures have been written so that the operator can determine the safety status of the plant in a timely manner without the SPDS being available. In addition, the operators have been trained in the simulator to respond to transient and emergency conditions without the SPDS being available.

Therefore, based on isolation of the SPDS from the monitored systems, availability of data via other non-SPDS indicators and the associated procedures to utilize this data, and the completion of the supporting operator training, the licensee concludes that the proposed change does not involve any significant increase in the probability or consequences of an accident.

(2) The requested delay in initial operability of the SPDS does not require any revision or modification to any plant systems, structures, components, technical specifications or operating procedures. As a result, the number and types of abnormal operating transients already analyzed in the FSAR will not be affected. Operator response to the transients is covered in the existing normal and emergency plant operating procedures which do not require an operable SPDS for their successful execution. Therefore, the licensee concludes that the requested delay in initial operability of the SPDS will not create a new or different kind of accident from any previously analyzed in the FSAR.

(3) The requested delay in initial operability of the SPDS does not require any revision to operating limits, setpoints, or operating procedures. Therefore, the licensee concludes that the FSAR margins of safety will not be reduced.

The NRC staff has reviewed the above licensee evaluation and agrees with the licensee's conclusions that the Commission's standards for a no significant hazards determination are met. The staff has, therefore, made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for Licensee: Troy B. Conner, Jr., Esq., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: A. Schwencer.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 28, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) pertaining to the weld and pipe support inservice inspection (ISI) program to comply with more recent editions of Section XI of the ASME Boiler and Pressure Vessel Code. The proposed revisions are required by 10 CFR 50.55a(g) (4)(ii) and (5)(i) and would allow the incorporation of improved examination techniques and sampling plans that may have been developed during the previous 120-month interval (i.e., first 10-year operating cycle).

Basis of proposed no significant hazards consideration determination: The ISI program provides continued assurance of structural integrity of the pressure-retaining components of critical systems that contain radioactive and/or high pressure fluids, or that provide for safe shutdown of the plant in either normal or accident conditions. The proposed changes will allow the program to reflect industry experience and increased understanding of service induced failure mechanisms and detection. This experience and knowledge is reflected in the requirements of newer editions of Section XI of the ASME Code approved for use by the NRC. The revised inspection program represents an expanded and more clearly defined sampling plan of examination or pressure retaining components and their supports.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed revisions would affect only an upgrading of the ISI program and therefore satisfy these three criteria.

Based on the foregoing, the Commission proposed to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room

location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 22, 1985.

Description of amendment request: The proposed change revises Specification 6.5.2 as discussed below.

The Safety Review Committee membership will be changed to include the next-to-highest level management in the Nuclear Generation, Engineering and Quality Assurance and Reliability Departments. The Directors of Mechanical, Electrical, Nuclear, Civil/Structural, and Piping and Process in the Design and Analysis Section of the Engineering Department will be replaced by the Vice President—Design and Analysis. The Managers of Radiological Health and Chemistry and Operational Analysis and Training in the Nuclear Generation Department will be replaced by the Vice President—Generic Nuclear Support. The Director of Environmental Programs in the Engineering Department will no longer be a member of the Committee.

The Resident Managers for the Indian Point 3 and James A. FitzPatrick Nuclear facilities will be included as voting members of the Safety Review Committee, whereas previously, these individuals were alternate voting members.

These changes in the Committee membership reduce the Committee to nine (9) voting members.

Basis for proposed no significant hazards consideration determination: The proposed changes do not degrade the competence of the safety review committee and will assure that this aspect of plant safety management is adequate. Therefore the proposed amendment involves no significant hazards consideration because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that

these changes do not involve a significant hazards consideration.

Local Public Document Room

location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: February 17, 1984.

Description of amendment request: The amendment would revise the Technical Specification to include the appropriate Limiting Conditions of Operation, Surveillance Requirements, and Administrative Controls for completed NUREG-0737 items. The proposed changes were made in response to an NRC request to provide Technical Specifications for specified NUREG-0737 items. The changes involve the post-accident sampling system, the sampling and analysis of plant effluents, the noble gas effluent monitors, the containment high range monitors, the containment pressure monitors, and inadequate core cooling determination equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration relates to changes that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related to the post-accident sampling system, the sampling and analysis of plant effluents, the noble gas effluent monitors, the containment high range monitors, the containment pressure monitors, and inadequate core cooling determination equipment. Since the requested changes revise the Technical Specifications to include additional Limiting Conditions of Operation, Surveillance Requirements, and Administrative Controls for these systems, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room
location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: March 27, 1984.

Description of amendment request: The proposed change would revise appropriate portions of the Index, Definitions, and Administrative Controls sections of Appendix A to the Technical Specifications, as attached, to reflect recent revisions to § 50.72 and the addition of § 50.73 to Title 10 of the Code of Federal Regulations which became effective on January 1, 1984.

Specifically § 50.73 states that: "the requirements contained in this section replace all existing requirements for licensees to report 'Reportable Occurrences' as defined in individual plant Technical Specifications", the reporting requirements incorporated into the "Administrative Controls" section of the Salem technical specifications would be changed to reflect the revised reporting requirements; the definition, "Reportable Occurrence" would be replaced by a new term, "Reportable Event"; and, the Index would be updated.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing examples of actions not likely to involve a significant hazards consideration in the Federal Register (48 FR 14870). One of the examples (vii) relates to changes that make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Based on the above, and since the proposed change involves actions that conform to the referenced example in 48 FR 14870, we propose to determine that this application for amendment involves no Significant Hazards Consideration.

Local Public Document Room
location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: October 15, 1984.

Description of amendment request: The proposed amendment would revise Unit 2 Technical Specifications requirement 4.6.2.2.d to read "at least once per 5 years by verifying a NaOH solution flow rate of 12 ± 3 gpm from the spray additive tank through sample valve 2CS61 with the spray additive tank at 2.5 ± 0.5 psig." Presently, a flow of 7.3 ± 0.7 gpm is specified.

Basis for proposed no significant hazards consideration determination: The purpose of the test, a gravity flow of NaOH solution from the spray additive tank through a sample line (valve 2CS61), is to demonstrate unobstructed flow of liquid NaOH solution out of the tank to the containment spray system ductors. Previous testing resulted in a measured flow valve of 11.9 gpm for Unit 1 and 12.5 gpm for Unit 2. These values exceeded the values of 7.3 ± 0.7 gpm specified in the Technical Specification for each Unit. Since the larger flow rate was the more conservative, the Unit 1 Technical Specification was changed to 12 ± 3 gpm via Amendment No. 29. The change was never implemented on Unit 2. Further, the change does not alter any system design, function or method of operation, there is no increase in the probability or consequences of any previously analyzed accident, no new accidents or malfunctions are created, and no margins of safety are decreased.

The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing examples of actions not likely to involve a significant hazards consideration in the Federal Register (48 FR 14870). One of the examples (ii) relates to changes that constitute additional limitations, restrictions, or controls not presently included in the technical specifications. Since the larger flow rate would reflect a more conservative system design, it conforms to example (ii).

Based on the above, and since the proposed change involves actions that conform to the referenced example in 48 FR 14870, we propose to determine that this application for amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747

Pennsylvania Avenue, NW., Washington, D.C. 20006.
NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 7, 1984.

Description of amendment request: The proposed amendment request would change Technical Specification Surveillance Requirement 4.5.3.2 by adding b. to read as follows:

4.5.3.2 All Safety Injection Pumps, except the OPERABLE pump allowed above, shall be demonstrated inoperable at least once per 12 hours whenever the temperature of one or more of the RCS Cold Legs is less than or equal to 312 °F by the following:

a. By verifying that the motor circuit breakers have been removed from their electrical power supply circuits or.

b. For testing purposes, by verifying that the pump is in a recirculation flow path and that the manual discharge valve is closed.

The proposed change would permit pump testing, in accordance with Technical Specification 4.0.5, while having an operable pump aligned to the RCS as per Specification 4.5.3.2.

Basis for proposed no significant hazards consideration determination: There would be no increase in the probability or consequences of an accident scenario previously evaluated since only one pump will be aligned with the RCS. Adoption of this proposed change would not create the possibility of a new or different type of accident. Since the surveillance requirement is based on a mass addition pressure transient with a single failure of a relief valve resulting in brittle fracture of RCS components when more than one pump is injecting into the system; allowing one pump to be in a recirculation flow path would not create the possibility of a new accident. Further, the proposed change would cause no margin of safety to be reduced since the pump in the recirculation flow path would be incapable of injecting water into the RCS. As such, we have determined that the proposed amendments do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On these bases, the Commission proposes to determine that the

application for amendments do not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, NW.,

Washington, D.C. 20006.

NRC Branch Chief: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: August 22, 1984, December 21, 1984, February 22, 1985, and March 14, 1985.

Description of amendment request: The proposed amendment would change the date for completion of the modifications required to resolve Control Room Habitability, NUREG-0737 Item III.D.3.4. The date would be changed from startup from the refueling outage originally estimated to begin November 1984 (now scheduled for March 1985) to the refueling outage currently estimated to begin in September 1986.

The Confirmatory Order issued March 14, 1983, and revised November 10, 1983, required that the modifications needed to resolve Control Room Habitability, Item III.D.3.4 of NUREG-0737, be completed by the end of the refueling outage originally estimated to begin November 1984 (now scheduled to begin March 1985). To provide emergency power for ongoing modifications, including the Control Room Habitability modifications, the licensee is installing two additional emergency diesel generators manufactured by Transamerica Delaval Inc. (TDI).

As a result of recent failures at other facilities of TDI diesel generators, we require that the TDI diesel qualification be verified prior to their being made operational. The licensee is participating in an owners group program to verify qualification of the TDI diesel generators. These diesel generators were originally scheduled to be operational at the end of the March 1985 refueling outage. Due to the magnitude of this program, these diesel generators will not be operational at the end of this outage. The licensee expects to complete its diesel generator qualification prior to the next refueling outage.

Therefore, the final modification to resolve Control Room Habitability will be completed during the next refueling outage estimated to start September 1986, a delay of approximately 18 months.

The purpose of the modifications is to assure that control room operators will be adequately protected against the effects of an accidental release of toxic and radioactive gases and that the nuclear power plant can be safely operated or shut down under design basis accident conditions. Modifications to the facility necessary to comply with Item III.D.3.4, Control Room Habitability requirements, included the replacing of the existing single train Control Room Heating, Ventilating and Air Conditioning (HVAC) system with a redundant two train HVAC system. The current single train HVAC system is automatically loaded onto the diesel generator on loss of offsite power.

At the end of the refueling outage scheduled to start in March 1985, the installation of the redundant two train HVAC system will be completed except for final connection to the new diesel generators. The system will meet the single failure criteria of the Standard Review Plan during normal operation and for an emergency condition resulting in safety features system actuation without loss of offsite power. Because the additional diesel generator capacity will not be available at the end of the 1985 outage, only the B train can be automatically loaded onto the existing diesel generators. Therefore, during loss of offsite power, the Control Room HVAC will not meet the single failure criteria. However, the licensee stated that in the case of loss of offsite power with an associated single failure (failure of the B train), the loads on the existing diesel generator could be manipulated to allow manual loading of the A train. In addition, the licensee indicated there is ample time to manually load the A train (10 minutes) prior to its being required to maintain the Control Room environment at acceptable levels. The licensee also stated that procedures will be changed to reflect the interim installation, and the operators will be instructed on the modified procedures.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any

accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The two train HVAC system that will be installed by the end of the current refueling outage (started March 15, 1985) is an overall improvement in the Control Room Habitability System over the current single loop system. One train of the improved system will automatically load onto the diesel generators, which is equivalent to the current system design where the single HVAC train is automatically loaded on the diesel generator. Therefore, since the two train HVAC system is an improvement of the current design and there is no change in HVAC operation, i.e. both have one train automatically loaded on the diesel, the proposed action would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On this basis, the Commission proposes to determine that the application involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: September 20, 1984.

Description of amendment request: The amendment would modify the Technical Specifications to (1) change the name of the Reactor Building Stack, Auxiliary Building Stack, Reactor Building Service Area Vent and the Radwaste Service Area Vent Particulate Monitors to Particulate Samplers, (2) change the name of the Radwaste Service Area Iodine monitor to Iodine Sampler, and (3) delete the source check, instrument channel calibration and the channel check for these instruments.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions not likely to

involve a significant hazards consideration is Example (i), a purely administrative change to the technical specification: For example, a change to achieve consistency throughout the technical specifications; correction of an error, or a change in nomenclature.

The name "sampler" more correctly describes the function and surveillance requirements for the instruments employed to assay radioactive particles and iodine in various ventilation exhaust streams. The instrument does not continuously monitor the stream but collects a sample on filter paper and charcoal filter cartridges. After a specific quantity of air has been passed through the sampler, the cartridges are removed and counted. This change is similar to the example of an administrative change in that it is a change in nomenclature.

The samplers do not have sources or channels; the cartridges are removed for counting in the laboratory using calibrated analyzers. Therefore, source checks, channel calibration and channel check requirements are not applicable to these instruments. This change is the same as the example of a purely administrative change in that it is a change to correct an error.

Therefore, the proposed changes fall within the scope of the example cited above. Accordingly, the Commission proposes to determine that these changes involve no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: November 15, 1984; January 8, 1985; February 7, 1985; March 18, 1985, and March 21, 1985.

Description of amendment request: These submittals supplement and revise a previous request for amendment dated February 17, 1983, noticed in the *Federal Register* on June 23, 1983 (48 FR 28765), as supplemented by letter dated July 12, 1983, noticed in the *Federal Register* on December 21, 1983 (48 FR 56510). The November 15, 1984, and March 21, 1985, submittals provide additional technical information on the nuclear service bus and fire protection system added as part

of the NUREG-0737 modification to supplement the information provided in the July 12, 1983, submittal. The January 8, 1985, February 7, 1985, and March 18, 1985, submittals modify the Technical Specification changes proposed in the July 12, 1983, submittal and propose additional Technical Specification changes. The February 17, 1983, request for amendment remains unchanged.

Specifically, the modifications to the Technical Specification changes proposed in the July 12, 1983, submittal are (1) revised limiting conditions for operation (LCOs) for battery chargers, (2) revised LCOs for the inverters, (3) added sets of nuclear service buses that are included in the nuclear service bus LCO.

The additional proposed Technical Specification changes are (1) increased minimum switchyard voltage for reactor criticality, (2) increased switchyard voltage limits for positive actions, (3) an added LCO for the 480 volt switchgear interconnection, (4) an added LCO and surveillance requirements for the Nuclear Service Electrical Building emergency heating and ventilating systems, (5) added diesel generator test requirements for the verification of closing of the intertie breakers and energizing of the Control Room essential heating ventilating and air conditioning system, (6) added reporting requirements for inoperable fire protection equipment, (7) renumbered paragraphs and sections and changed table title, and (8) modified bases section of the Technical Specifications for consistency with the proposed changes to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Examples of actions likely to involve no significant hazards considerations are Example (ii), a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement; and Example (i), a purely administrative change to the Technical Specifications: For example, change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

The November 15, 1984, and March 21, 1985, submittals provide additional technical information to supplement the information provided in the February 17, 1983, and July 12, 1983, submittals. The supplemental information does not change the proposed Technical Specification.

In this case, the modifications in the January 8, 1985, February 7, 1985, and March 18, 1985, submittals apply only to the proposed Technical Specifications in the July 12, 1983, submittal (specifications which have not been adopted) and do not limit, restrict or control the current Rancho Seco Technical Specifications in any way. Furthermore, the eventual implementation of the proposed Technical Specifications (as set out in the July 12, 1983, submittal and modified by the January 8, 1985, February 7, 1985, and March 18, 1985, submittals) will provide additional controls and limitations not included in the current Technical Specifications. This is the same as Example (ii) of an action likely to involve no significant hazards consideration.

The additional proposed Technical Specification changes set forth in the January 8, 1985, February 7, 1985, and March 18, 1985, submittals would add additional limitations and controls by (1) increasing switchyard voltage limits for taking specific actions, (2) adding LCOs and Surveillance Requirements for the Nuclear Service Electrical Building emergency heating and ventilating systems, (3) adding diesel generator testing requirements, (4) adding an LCO for the 480 volt switchgear intertie, and (5) adding reporting requirements for inoperable fire protection equipment. Therefore, these changes are similar to Example (ii) of an action likely to involve no significant hazards consideration.

The number changes to tables and sections, the title change to one table and modifications to the bases sections of the Technical Specifications are administrative changes to achieve consistency and change nomenclature. These changes are the same as Example (i) of an action likely to involve no significant hazards consideration.

Based on the above, the Commission proposes to determine that the February 17, 1983, application, as supplemented and revised by letters dated July 12, 1983, November 15, 1984, January 8, 1985, February 7, 1985, March 18, 1985, and March 21, 1985, does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

**Sacramento Municipal Utility District,
Docket No. 50-312, Rancho Seco
Nuclear Generating Station, Sacramento
County, California**

Date of amendment request:
December 17, 1984, as supplemented
March 14, 1985, and April 9, 1985.

Description of amendment request:
The proposed amendment would revise the Technical Specifications (TSs) to support the operation of Rancho Seco Nuclear Generating Station (Rancho Seco) at full rated power during upcoming Cycle 7 operation. The proposed amendment request changes the following areas:

1. Safety Limits, Reactor Core (TS 2.1);
2. Limiting Safety System Settings, Protective Instrumentation (TS 2.3);
3. High Pressure Injection and Chemical Addition Systems (TS 3.2);
4. Control Rod Positions (TS 3.5.2.5); and
5. Reactor Power Imbalance (TS 3.5.2.6).

In addition, the licensee proposes to delete TS Figure 3.5.2-12 from the TSs.

To support the license amendment request for operation of Rancho Seco during Cycle 7, the licensee submitted, as an attachment to the application, Babcock and Wilcox (B&W) Report BAW-1850 dated October 1984. A summary of the Cycle 7 operating parameters and a safety analysis are included in the report. Except for the NOODLE code used for physics calculations, there are no significant changes to the analytical methods used and accepted for previous cores.

During the refueling outage, nine fuel assemblies will be reinserted into the core and 56 fuel assemblies will be discharged and replaced by new Mark BZ fuel. The Mark BZ fuel assemblies are similar to the previously used fuel except that they contain intermediate spacer grids made of Zircaloy rather than Inconel and redesigned holddown springs made from Inconel 718. The previous springs were made from Inconel 750.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of the types of amendments not likely to involve significant hazards considerations is (iii), a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are

made to the acceptance criteria for the Technical Specifications, that the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable. Another example of the types of amendments not likely to involve significant hazards considerations is (i), a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

This reload involves the reinsertion of nine fuel assemblies of a type previously approved and used and the insertion of 56 new fuel assemblies of the Mark BZ type. The Mark BZ fuel assemblies are the same as previously approved assemblies in terms of fuel rods, end grid, end fittings, and guide tubes and differ only slightly in the use of Zircaloy spacer grids rather than Inconel Intermediate Spacer grids and the use of redesigned spacer springs of Inconel 718. The use of the Mark BZ fuel assembly has been previously reviewed and approved by the Commission's staff.

There have been no significant changes made to the acceptance criteria for the Technical Specifications. Except for the NOODLE code, there have been no significant changes to the analytical methods used and accepted for previous cores to demonstrate conformance with Technical Specifications and regulations. The NOODLE code was used to calculate reactor physics parameters. The licensee has compared the NOODLE code results and the previously used PDQ07 code results with measured data and has found the NOODLE code as accurate as the PDQ07 code. The NOODLE code has been previously reviewed and approved by the Commission's staff. Therefore, use of the NOODLE code for Cycle 7 physics calculations will not significantly reduce any safety margins. Thus, the reload and the proposed license amendment reflecting it appear to be encompassed by example (iii).

Figure 3.5.2-12 in the current TSs was utilized only as an illustration to support statements in the TS Section 3.5.2 bases discussion. The figure served no other function. In a previous license amendment, this portion of the bases description was deleted but Figure 3.5.2-12 was inadvertently not deleted. This change is similar to example (i) of a purely administrative change to the Technical Specifications.

On these bases, the Commission's staff proposes to determine that these

proposed changes do not involve significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 6, 1985.

Description of amendment request: The amendment would revise Technical Specification 3/4.1.1.2, "Shutdown Margin—Modes 3, 4 and 5." The revision would change the required shutdown margin from at least 2% for modes 3, 4 and 5 to a mode and reactor coolant system boron concentration dependent shutdown margin variable from at least 1% to at least 3.29%.

Basis for proposed no significant hazards consideration determination: As stated in the Technical Specification basis, the most limiting accident with regard to shutdown margin for modes 3, 4 and 5 is a boron dilution accident. The licensee's analysis of this event in the Final Safety Analysis Report (FSAR) was for cycle 1. That analysis showed that with a shutdown margin of at least 2% for modes 3, 4 and 5, the plant operator would have at least 13.4 minutes to halt the boron dilution. This was acceptable to the NRC staff and resulted in the current Technical Specifications. For cycle 2, the licensee performed an analysis that showed that the cycle 1 analysis was conservative for cycle 2. Hence, no Technical Specification change was required. For cycle 3, the licensee performed a bounding analysis of the boron dilution event and determined that in some cases the current Technical Specification does not ensure sufficient time for operator action.

Therefore, the licensee proposed this Technical Specification change to ensure operator action time consistent with that available at the time of licensing for cycle 1. Also, the lowest values of the revised shutdown margin requirements are consistent with the current Standard Technical Specifications.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those

examples. However, the staff has reviewed the licensee's request for the above amendment and has determined that should this request be implemented, it will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the resulting operator action time is consistent with that which formed the basis for licensing, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not being changed. Also, it will not (3) involve a significant reduction in a margin of safety because the shutdown margin still results in sufficient operator action time to respond to a boron dilution event, which is the limiting event in modes 3, 4 and 5. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Elinor G. Adensam.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 6, 1985.

Description of amendment request: The amendment would revise Technical Specifications to reflect a 1.9% reduction in thermal design flow. This includes changing Technical Specification (T.S.) 3/4.2.3, "RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor," and its bases to reflect the new regions of acceptable operation. T.S. Figure 3.2-3, "RCS Flow Rate versus R," and T.S. Figure 2.1-1, "Reactor Core Safety Limit—Three Loops in Operation," are also changed to reflect the new regions of acceptable operation. Finally, T.S. Figure 3.2-4, "Rod Bow Penalty as a Function of Burnup," is deleted as a result of the new regions of acceptable operation.

Basis for proposed no significant hazards consideration determination: Final Safety Analysis Report (FSAR) accident analyses were evaluated for a 1.9% reduction in thermal design flow. Loss of coolant accident (LOCA) events were evaluated using the BART code. Non-LOCA events were evaluated using

the methods described in the FSAR. The evaluations show that the design bases continue to be met for all events with the 1.9% reduction in thermal design flow.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (vi) relates to a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system specified in the Standard Review Plan. The 1.9% reduction in thermal design flow is similar to this example. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Elinor G. Adensam.

Southern California Edison Company et al., Docket Nos. 50-361 and 50-362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: April 2, 1984 (Reference PCN-109 and 110) and April 27, 1984 (Reference PCN-108, 119, and 125).

Description of Amendment Request: The proposed changes would revise the technical specifications as follows:

(1) PCN-108 would revise Technical Specification Table 3.8-1, "Containment Penetration Conductor Overcurrent Protective Devices," to correct equipment designations.

(2) PCN-109 would revise Technical Specification 4.2.3.c to clarify the surveillance interval for determination of the effect of burnup on the incore nuclear instrumentation system. A surveillance interval based on effective full power days of reactor operation more accurately reflects core changes due to burnup than a surveillance interval based on elapsed time.

(3) PCN-110 would revise Technical Specification 4.3.3.2.a to state that a channel check is not needed in the case of a temporary loss of the plant computer.

(4) PCN-119 would revise Technical Specification Bases 3/4.2.3, "Azimuthal Power Tilt", to state that the Core Operating Limits Supervisory System (COLSS) calculates azimuthal power tilt based on input from the fixed incore

neutron detectors and does not receive input from the Core Protection Calculators (CPC's).

(5) PCN-125 would revise Technical Specification 3/4.6.2.2, "Iodine Removal System", to correct wording regarding spray chemical solution temperature requirements. Additionally, the proposed change provides percent tank levels which correspond to the minimum usable spray chemical solution volume.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Each proposed change discussed herein is similar to example (i) of 48 FR 14870. Therefore it is proposed that these changes do not involve significant hazards considerations. A description of each proposed change to the technical specifications and a discussion of how each change is similar to example (i) of 48 FR 14870 follows:

Specific Changes Requested and Basis for Proposed No Significant Hazards Determination:

1. *Proposed Change PCN-108.* The proposed change would revise Table 3.8-1 of Technical Specification 3/4.8.4.1, "Electrical Equipment Protective Devices, Containment Penetration Conductor Overcurrent Protective Devices," which requires the operability of containment penetration conductor overcurrent protective devices. These devices are essentially circuit breakers which help to maintain containment integrity by preventing overcurrents from damaging electrical penetrations through the containment boundary. Table 3.8-1 provides a list of equipment located inside containment which requires electrical power and, therefore, is associated with primary and backup overcurrent protective devices. Each piece of equipment is specified by an alpha-numeric designation, several of which are currently incorrect. The following equipment designations are currently incorrect: for Unit 2, Containment Recirculation Unit E-333; for Unit 3, Standby Containment Normal Cooling Fan E-333, Containment Normal Cooling Fan E-334, and Containment Recirculation Unit E-333. The proposed change would revise these designations

to read: for Unit 2, Containment Recirculation Unit A-353; for Unit 3, Standby Containment Normal Cooling Fan E-393, Containment Normal Cooling Fan E-394, and Containment Recirculation Unit A-353.

The proposed change would correct the currently incorrect designations of equipment associated with overcurrent protective devices. Because the proposed change corrects existing errors, it is similar to Example (i) of 48 FR 14870.

2. *Proposed Change PCN-109.* The proposed change would revise Technical Specification 3/4.2.3, "Azimuthal Power Tilt—Tq." The azimuthal power tilt is a parameter which reflects the power variation between symmetrically located fuel assemblies in the core. The core operating limit supervisory system (COLSS), a system which monitors core parameters, continuously monitors the azimuthal power tilt based on input from the incore detectors. Technical Specification 4.2.3.c requires an independent confirmation of the validity of the COLSS-calculated azimuthal power tilt at least once per thirty-one days. This confirmation is necessary due to possible inaccuracy in the COLSS calculation resulting from changing reactor conditions as fuel is burned.

The proposed change would revise Technical Specification 4.2.3.c to require confirmation of COLSS-calculated azimuthal power tilt validity at least once per thirty-one effective full power days, rather than once per thirty-one calendar days. Thus, the proposed change reflects the fact that the COLSS-calculated azimuthal power tilt accuracy is a function of fuel burnup rather than calendar time.

The proposed change would also achieve consistency between T.S. 3/4.2.3 and other technical specifications which specify time intervals based on fuel burnup. Because the proposed change achieves consistency throughout the technical specifications it is similar to example (i) of 48 FR 14870.

3. *Proposed Change PCN-110.* The proposed change would revise surveillance requirement 4.3.3.2.a of Technical Specification 3/4.3.3.2, "Instrumentation—Incore Detectors," which requires the operability of the incore detecting system. The incore detection system monitors neutron flux distribution within the reactor core. It provides this information to the core operating limit supervisory system (COLSS) which is used by the plant computer to make various calculations relating to power distribution within the reactor. Surveillance requirement

4.3.3.2.a requires the incore detection system to be demonstrated operable by the performance of a channel check within twenty-four hours prior to its use and at least once per seven days thereafter. This wording could be misinterpreted to imply that channel check must be performed each time the plant computer is removed from service, even though this does not make the incore detection system inoperable. Because the plant computer may be removed from service several times during a week, surveillance requirement 4.3.3.2.a, if misinterpreted, could result in an incore detection system channel check to be performed several times within a week. The proposed change would amend surveillance requirement 4.3.3.2.a to require demonstration of incore detection system operability by performance of a channel check within twenty-four hours prior to its use if seven or more days have elapsed since the previous channel check and at least once per seven days thereafter. This proposed change would prevent unnecessary channel checks from being performed on the incore detection system each time the plant computer is removed from and returned to service. The proposed change is similar to example (i) of 48 FR 14870 in that the proposed change is purely administrative, and is being proposed to clarify rather than change existing requirements.

4. *Proposed Change PCN-119.* The proposed change would revise Technical Specification Bases 3/4.2.3, "Azimuthal Power Tilt—Tq," which concerns the method of computing the azimuthal power tilt, a calculation which reflects the power variation in the core between symmetrically located fuel assemblies. This parameter is required to be kept within limits which ensure that design safety margins are maintained. The azimuthal power tilt is calculated by both the core operating limit supervisory system (COLSS), which monitors the reactor and provides information to the operator, and the core protection calculators (CPC's). The CPC's monitor several core parameters and are able to trip the reactor should one of these core parameters exceed its limit. The current T.S. Bases 3/4.2.3 wording could be misinterpreted to infer that the CPC's provide an input to the COLSS for azimuthal power tilt calculation and that the COLSS does not calculate azimuthal power tilt when the reactor is operating below twenty percent rated thermal power. In reality, the COLSS and the CPC's perform calculations independently of each other, and the COLSS performs calculations at all

power levels, although it is inaccurate at power levels below twenty percent rated thermal power because the incore neutron detectors which provide inputs to the COLSS have a low signal-to-noise ratio during plant operation at low power levels. The proposed change to T.S. Bases 3/4.2.3 clarifies the fact that the COLSS and the CPC's perform calculations independently and explains that the COLSS azimuthal power tilt calculation is inaccurate at power levels below twenty percent rated thermal power. This is due to the incore neutron detectors' inaccuracy at low power levels. However, the CPC's assume a minimum power level of twenty percent rated thermal power which results in highly conservative calculations at low power levels and, therefore, ensures that design safety margins are maintained. The proposed change also specifically states that, because of the COLSS inaccuracy at low power levels, the Limiting Condition for Operation of T.S. 3/4.2.3 is not applicable at operation below twenty percent rated thermal power.

In summary, the proposed change would revise T.S. Bases 3/4.2.3 in order to: (1) Clarify the fact that the COLSS and the CPC's perform calculations independently; (2) explain why the COLSS azimuthal power tilt calculation is inaccurate at power levels below twenty percent rated thermal power; and (3) explain why the Limiting Condition for Operation of T.S. 3/4.2.3 is not applicable at operation below twenty percent rated thermal power. Because the proposed change corrects and clarifies T.S. Bases 3/4.2.3, it is similar to example (i) of 48 FR 14870 in that it is purely administrative.

5. *Proposed Change PCN-125.* The proposed change would revise Technical Specification 3/4.6.2.2, "Iodine Removal System," which requires that the iodine removal system be operable. This system injects a sodium hydroxide (NaOH) solution into the containment spray system (CSS) to enhance the removal of iodine from the containment atmosphere when the CSS is activated. When containment pressure reaches a specified level, the containment spray actuation signal (CSAS) activates both the CSS, which reduces containment pressure by spraying a cool liquid solution into the containment area, and the iodine removal system, which injects an iodine-absorbent NaOH solution that mixes with the CSS solution and is sprayed into containment. The NaOH solution storage tank is connected to the CSS by a main valve and a bypass valve which are located at different levels on the storage tank. The proposed change

to T.S. 3/4.6.2.2 consists of the following two parts:

(a) There is currently an inconsistency between T.S. 3.6.2.2 for Unit 2 and that for Unit 3. T.S. 3.6.2.2 for Unit 2 requires as a limiting condition for operation that the NaOH solution be stored with a minimum temperature between 82 °F and 88 °F. Because this wording suggests that there is no upper temperature limit, T.S. 3.6.2.2 for Unit 3, which was written at a later date, was reworded to state that the NaOH solution must be stored with a temperature between 82 °F and 104 °F. Proposed change PCN-125 would correct this discrepancy in T.S. 3.6.2.2 for Unit 2 by requiring that the Unit 2 solution storage tank be maintained at a temperature between 82 °F and 104 °F.

(b) For both Units 2 and 3, T.S. 3.6.2.2 currently specifies that 1456 gallons of NaOH solution must be available. The proposed change clarifies this volume requirement by additionally specifying the percentage of the storage tank volume that the solution must fill in order for 1456 gallons of solution to be available. When the normal CSS valve is in use, the NaOH solution is required to fill 85% of the tank's indicated volume. When the bypass valve is in use, the NaOH solution is required to fill 67% of the tank's indicated volume. The values are different because the bypass valve on the storage tank is located below the normal valve.

The proposed change described in part (a), above, requires that upper temperature limit of 104 °F be required for Unit 2 NaOH solution storage. Currently, there is no upper temperature limit. Because the proposed change would correct this omission and make the Unit 2 T.S. consistent with Unit 3, it is similar to Example (i) of 48 FR 14870 in that it is an administrative change.

The proposed change described in part (b), above, clarifies the volume of NaOH solution that must be stored by specifying what the solution volume must be as a percentage of the storage tank volume. Because this change does not change the existing technical specification, it is purely administrative and, therefore, is similar to example (i) of 48 FR 14870.

Local Public Document Room location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorneys for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company et al., Docket Nos. 50-361 and 50-362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 23, 1985 (Reference PCN-139).

Description: The proposed change revises Technical Specification (T.S.) 3/4.7.6 "Snubbers". Technical Specification 3/4.7.6 requires that snubbers be operable to ensure the integrity of safety related systems and specifies the frequency and type of periodic inspections required to verify snubber operability. The proposed change revises T.S. 3.7.6 to more closely conform to the model technical specifications provided by NRC Generic Letter 84-13 "Technical Specifications for Snubbers" dated May 3, 1984. Specifically the following changes are proposed:

1. Delete Snubber Listings;
2. Categorize snubbers into accessible and inaccessible groups;
3. Restrict increases in the visual inspection interval;
4. Eliminate refueling outage inspections for systems which have undergone unexpected transients;
5. Revise visual test acceptance criteria to further restrict post inspection operability determinations for hydraulic snubbers;
6. Delete alternate method for functional test sample selection; and
7. Differentiate between hydraulic snubber and mechanical snubber functional test acceptance criteria.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed license amendment involves a significant hazards consideration by providing certain examples (48FR14870) of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or change of nomenclature. Example (ii) relates to a change which is an additional requirement or restriction not currently included in the technical specifications: For example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously analyzed accident or may

reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

Each of the changes proposed by licensees is similar to one of the above examples, and thus it is proposed that the changes do not involve a significant hazards consideration. The following is a more detailed description of each of the specific changes proposed to T.S. 3/4.7.6 and a description of how each is similar to one of the three examples of 48FR14870 discussed above.

1. *Delete Snubber Listings.* Currently, T.S. 3.7.6 requires that all snubbers listed in Tables 3.7-4a and 3.7-4b be operable. Tables 3.7-4a and 3.7-4b identify specific numbers of snubbers by size and type associated with each safety-related system. The proposed change deletes these tables and thus would no longer identify specific numbers, size and type of snubbers. Instead, the proposed specification would require all snubbers installed on safety related systems or snubbers whose failure could affect safety related systems to be operable and defines criteria to determine if a snubber is subject to this specification.

The proposed change will continue to require all snubbers installed on safety related systems to be operable. It does not reduce any existing operability or surveillance requirement. Therefore, this proposed change is editorial and is similar to example (i) of 48 FR 14870.

2. *Categorize Snubbers.* The proposed change adds a new provision which allows snubbers to be categorized as either accessible or inaccessible during plant operation for the purpose of scheduling visual inspections. These two groups may be inspected at different times, but will still be required to be inspected at the specified intervals. This change does not affect the currently specified inspection interval but allows inspections of accessible and inaccessible snubbers to be scheduled independently.

This change does not reduce any existing requirement. This proposed change is editorial and similar to example (i) of 48 FR 14870.

3. *Restrict Increases in Visual Inspection Interval.* The visual inspection interval is determined by the number of snubbers found inoperable in the previous inspection. For example if 8 snubbers are found inoperable, the next inspection would be required in 31 days. If this inspection uncovered a generic problem which is identified and corrected and the subsequent inspection found no snubbers inoperable then the

existing T.S. allow the inspection interval to be increased by one step to 62 days. If the next inspection again found no snubbers inoperable then the inspection interval could be increased by two steps to 6 months. The proposed change will no longer allow two step increases in inspection intervals.

Since the proposed change will allow only one step increases in surveillance intervals, it is an additional restriction. Therefore, this change is similar to example (ii) of 48 FR 14870.

4. *Eliminate Refueling Outage Inspection.* Currently, in addition to the 100% visual inspection of all snubbers and functional testing of a representative sample of snubbers, the T.S. require a special refueling outage inspection of snubbers located on systems identified as having undergone unexpected, potentially damaging transients. The special inspection involves visual inspection of the affected snubbers and verification of freedom of movement (i.e., a partial functional test). The additional visual inspection is redundant to the existing visual inspection requirements. The freedom of movement testing is redundant for those snubbers which are included in the representative functional test sample. The proposed change deletes these special inspection requirements for snubbers on systems identified as having undergone unexpected, potentially damaging transients. This change may reduce the probability of discovery of a damaged snubber on a system which has experienced an unexpected transient only if both damage to the snubber was not visually evident and the affected snubber was not included in the functional test sample.

Although this reduction in the probability of discovery of a damaged snubber may in some way reduce a safety margin, the proposed change satisfies the applicable acceptance criteria of SRP Section 3.9.3 "ASME Code Class 1, 2 and 3 Components, Component Supports and Core Support Structures," which defines acceptance criteria for inspection and testing of snubbers. SRP Section 3.9.3 references the Standard Technical Specifications (STS), NUREG-0212 for Combustion Engineering PWR's, for snubbers as an acceptable snubber inspection and testing program. This proposed change is consistent with the current STS for snubbers as promulgated by Generic Letter 84-13 dated May 3, 1984. Therefore, this change meets the SRP Section 3.9.3 acceptance criteria for snubber testing and inspection and is similar to example (vi) of 48 FR 14870.

5. Revise Visual Test Acceptance Criteria. Currently, snubbers which appear to be inoperable as result of a visual inspection can be determined to be operable for the purposes of determining the next inspection interval provided that the snubber passes a functional test conducted in the as-found condition. This provision applies to both hydraulic and mechanical snubbers. The proposed change will no longer allow this provision for hydraulic snubbers found with uncovered fluid ports. Thus, hydraulic snubbers found in this condition will be considered inoperable.

This change is an additional restriction and is therefore similar to example (ii) of 48 FR 14870.

6. Delete Alternate Functional Test Sample Selection Criteria. Sample selection currently can be made by one of two methods. One method simply requires functional testing of 10% of each type of snubbers. For each type of snubber where one or more functional test failures occur, an additional 10% must be tested until no more failures are found or all snubbers of that type have been inspected. The alternate method requires testing of a representative sample of each type of snubber with retesting based on probabilistic criteria specified in T.S. Figure 4.7-1. The proposed change deletes the alternate sampling criteria since it will never be used.

Further, the proposed change specifies additional conditions on sample selection. The proposed change would require that 25% of the snubbers in the representative sample be snubbers from the following categories: (1) The first snubber from each reactor vessel nozzle; (2) snubbers within five feet of heavy equipment; or, (3) snubbers within ten feet of the discharge from a safety relief valve.

The proposed change is more restrictive in that it eliminates the alternate sampling method and requires that the sample include a percentage of snubbers from specific locations. Because this change institutes these additional restrictions it is similar to example (ii) of 48 FR 14870.

7. Revise Functional Test Acceptance Criteria. The proposed change will differentiate between the functional test acceptance criteria for mechanical and hydraulic snubbers. Currently no differentiation is made. The proposed change more accurately defines the functional requirements for each type of snubber.

Currently, functional testing requires verification that fasteners for attachment of the snubber to the component are secure. Visual inspection

also requires verification that snubber attachments are secure. The proposed change deletes this redundant functional test requirement. Because the proposed change editorially improves clarity and consistency within the technical specifications it is similar to example (i) of 48 FR 14870.

Local Public Document Room
Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 912672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosmead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 30, 1985.

Description of amendment request: This amendment request modifies a previous application for amendment of the Technical Specifications which was the subject of a notice published at 49 FR 7047 on February 24, 1984. This modification clarifies the test requirements for the containment purge and vent valve leakage and specifies the allowable valve leak rates. The proposed amendment would add to the Technical Specifications a requirement to leak test the containment purge and exhaust isolation valves after each time the valves are opened if the valves have not been tested within the past six months.

Basis for proposed no significant hazards consideration determination: This modification to a previous amendment request does not affect the basis for the proposed no significant hazards consideration determination previously published at 49 FR 7047.

The proposed amendment would be an additional requirement to the Technical Specifications which currently require the containment isolation valves to be leak tested once each operating cycle during the refueling outage.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards consideration relates to a change that constitutes an additional limitation, restriction or control not presently

included in the Technical Specification (Example (ii)).

Thus, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room
location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 30, 1985.

Description of amendment request: The proposed amendment is a revision to a previously proposed amendment dated September 1, 1983. It would revise the testing requirements for hydraulic snubbers and add requirements for mechanical snubber operability and testing. The changes would also clarify inspection frequency, state certain functional testing requirements, establish the basis for sample size, and clarify test results acceptance criteria. The proposed amendment would delete the listing of safety-related snubbers.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards considerations include changes that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related to hydraulic snubbers to clarify requirements and include additional testing, and incorporate both operability and testing requirements for mechanical snubbers. Since the requested changes upgrade the requirements for hydraulic snubbers and add requirements for mechanical snubbers, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room
location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts,

and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: February 13, 1985.

Description of amendment request: The proposed amendment would change the required minimum reactor coolant flow rate, Technical Specification Table 3.2-1, for four reactor coolant pump operation to 389,664 gpm from 396,880 gpm and for three reactor coolant pump operation to 291,080 gpm from 297,340 gpm. The revised flows represent 108% of design flow plus an uncertainty allowance of 2.5%. The current values for minimum reactor coolant flow represent 110% of design flow plus the same uncertainty allowance of 2.5%. The amendment would also change the referenced flow developed for four pump and three pump operation as given on Figures 2.1-2 and 2.2-1 of the Technical Specifications to correspond to the reduction to 108% design flow vice 110% design flow. An editorial change, to clarify that the flow value for three pump operation given on Figure 2.2-1 represents an approximate rather than exact 25% flow reduction from four pump operation, also would be included in the amendment.

Basis for proposed no significant hazards consideration determination: The present Cycle 5 core includes 64 fuel assemblies which have lumped burnable-poison rod assemblies. Previous cores have not used such assemblies (except for Cycle 1 when both burnable poison rods and orifice rods were used). The presence of these poison rods has altered the core bypass flow path and, therefore, the split between core flow and core bypass flow. The change also reduces the total system flow slightly. Thus, the overall effect is to reduce bypass flow, reduce slightly total reactor coolant system flow and increase the core flow. Therefore, the minimum reactor coolant system flow can be reduced without changing the minimum departure-from-nucleate-boiling-ratio requirement.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments not likely to involve a significant hazards consideration. One of the examples (vi) relates to a change which either may result in some increase in the

probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The proposed reduction to the minimum required reactor coolant system flow neither affects the probability or consequences of any previously analyzed accident nor reduces any safety margin. Therefore, the change clearly meets the standards as would be measured by the application of this example. The remaining changes are purely administrative to achieve consistency and therefore fit example (i) provided by the Commission.

Based on the foregoing, the Commission's staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendments request: March 11, 1985.

Description of amendments request: The proposed Technical Specification changes submitted March 11, 1985, by the licensee would reduce the boron concentration in the boron injection tank and the boric acid system. These changes would reduce maintenance problems and thus the associated personnel radiation exposure. The proposed reduction consists of a change in the minimum Boron Injection Tank (BIT) concentration and minimum Boric Acid System concentration from 11.5% to 7.4% (weight percent). The purpose of the BIT is to mitigate the reactivity addition resulting from a main steam line break.

The above reduction in BIT concentration is acceptable since analyses of the main steam line break accident at the proposed concentration meet all applicable acceptance criteria specified in Chapter 15 of the NA-1&2 Final Safety Analysis Report. The reduction in boric acid system concentration can be accomplished by increasing the minimum allowable Boric Acid Tank inventory associated with

each unit from 4450 gallons to 6000 gallons, thereby preserving the capability for cold safe shutdown at any time in reactor life with the most reactive control rod assembly withdrawn from the core.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the no significant hazards consideration by providing certain examples (48 FR 14870). Example (vi) of a no significant hazards consideration involves a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system as specified in the Standard Review Plan. Although the instant amendment would permit a reduction in the neutron-absorbing boron concentration, past experience with similar amendments authorizing such reductions has shown that the effects and results of such reductions are clearly within all acceptance criteria with respect to the systems as specified in the Standard Review Plan. Thus, this amendment falls within example (vi) of actions not likely to involve significant hazards considerations and, on this basis, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Branch Chief: James R. Miller.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: March 16, June 28, August 3, and August 9, 1982, June 30 and October 27, 1983, March 22 and November 2, 1984.

Description of amendment requests: The request for amendments was initially noticed on July 20, 1983 (48 FR 33092) and on July 20, 1984 (49 FR 25328). This notice includes changes requested in a subsequent submittal dated November 2, 1984. These submittals would amend the operating license and the Technical Specifications to reflect changes in the organizational structure of the license. The November 2, 1984 submittal proposed to combine the

requests of the previous submittals with the most recent reorganization.

The most recently requested reorganization within the Nuclear Operations Department would create two new management level positions: Manager-Nuclear Programs and Licensing, and Assistance Station Manager (Nuclear Safety and Licensing). The Manager-Nuclear Programs and Licensing assumes certain authorities and responsibilities previously held by the Manager-Nuclear Operations Support in the areas of emergency preparedness, licensing and independent safety reviews. The new Assistance Station Manager (Nuclear Safety and Licensing) would assume certain authorities and responsibilities currently held by both the Station Manager and the Assistance Station Manager (Operations and Maintenance) regarding the operation of the Station Nuclear Safety and Operating Committee (SNSOC), licensing, safety engineering, and emergency planning. The change would not create any new authorities or responsibilities within the Nuclear Operations Department.

Basis for proposed no significant hazards consideration determination: The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration, because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hutton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual

notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: February 8, 1985 and March 6, 1985.

Description of amendments request: These amendments would revise the Technical Specifications to provide consistency in identification of the surveillance specimen capsules in the Technical Specifications and the actual surveillance specimen capsules. The surveillance specimen examination schedule is also modified to provide better information in accordance with the current regulations. The proposed changes would combine the existing Reactor Materials Surveillance Program into a single integrated program which conforms to the requirements of 10 CFR Part 50, Appendices G and H.

Date of publication of Individual notice in Federal Register: 50 FR 9919, March 12, 1985.

Expiration date of individual notice: April 11, 1985.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, P.C., 1650 L Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Power Authority of the State of New York, Docket No. 50-333, James A. Fitzpatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: March 21, 1985.

Brief description of amendment: These proposed changes would revise surveillance and calibration requirements to support operation with the newly installed Analog Trip Transmitter System.

Date of publication of individual notice in Federal Register: April 4, 1985 50 FR 13434.

Expiration date of individual notice: May 6, 1985.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: February 1, 1985, as modified on February 15, 1985.

Brief description of amendment: This amendment revises the Technical Specifications to permit changes in the normal full power background trip level for the main steam line high radiation scram and isolation setpoints to accommodate a short-term test of operation with hydrogen injection into the reactor coolant.

Date of issuance: April 5, 1985.

Effective date: April 5, 1985.

Amendment No.: 86

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 26, 1985 (50 FR 7980). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-237/249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: February 17, 1983, as supplemented by letters dated April 27 and October 24, 1984.

Brief description of amendments: The changes to the Technical Specifications reflect: (1) Changes made to Commonwealth Edison's corporate and station organizations and (2) changes necessitated by revisions to 10 CFR 50.54 and 50.72 and the addition of a new § 50.73 which revised the minimum staffing, immediate notification requirements and the Licensee Event Reporting system, respectively.

Date of issuance: March 20, 1985.

Effective date: March 20, 1985.

Amendment Nos.: 86 and 79.

Provisional Operating License No. DPR-19 and Facility Operating License No. DPR-25: The amendments revise the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1984 (49 FR 50800). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket No. 50-374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of application for amendment: January 8, 1985, as supplemented by letters dated January 30, 1985 and February 5, 1985.

Brief Description of amendment: This amendment revises the La Salle Unit 2 license to extend the scheduler requirements of License Condition 2.C.(5) for replacement/modification and test completion equipment subject to the environmental qualification rule. The extension is from March 31, 1985 to November 30, 1985.

Date of issuance: March 28, 1985.

Effective date: March 28, 1985.

Amendment No.: 8

Facility Operating License No. NPF 18: Amendment revised the license.

Date of initial notice in Federal Register: February 22, 1985 (50 FR 7420). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: September 29, 1982, as supplemented on February 7, 1985.

Brief Description of amendment: The amendment modified the Appendix A Technical Specifications by restructuring certain existing requirements and changing the transition temperature curve in Section 4.2.2.4.

Date of issuance: March 22, 1985.

Effective date: March 22, 1985.

Amendment No.: 39

Provisional Operating License No. DPR-45: Amendment revised the Appendix A Technical Specifications.

Date of initial notice in Federal Register: October 26, 1983 (48 FR 49583). The Commission's related evaluation for the license amendment is contained in a Safety Evaluation dated March 22, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 28, 1985.

Description of amendment request: The amendments change the Technical Specifications to delete the surveillance requirements relating to steam generator blowdown valves (Table 3.6-2). The valves originally were installed to provide containment isolation with safety-grade equipment. Due to removal of non-safety-grade piping and heat exchangers, upgrading the system, this isolation function is provided by other valves.

Date of issuance: March 18, 1985.

Effective date: March 18, 1985.

Amendment Nos.: 41 and 22.

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1984 (49 FR 50802). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 18, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendment: November 16, 1984.

Brief Description of amendment: The amendments change the Technical Specifications to reflect the transition to the use of optimized fuel assemblies.

Date of issuance: March 22, 1985.

Effective date: March 22, 1985.

Amendment Nos.: 42 and 23.

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1984 (49 FR 50802). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: August 15, 1984.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to change TS pages 6.1-6 and 6.1-6a to reflect the new requirements on minimum reactor operator staffing that became effective January 1, 1984.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment Nos.: 136, 136, & 133.

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 24, 1984, 49 FR 42817. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: February 6, 1984, and August 7, 1984.

Brief description of amendments: The amendments revise the TSs for both Hatch Units 1 and 2 to make them consistent with the guidelines provided in the NRC's Generic Letter 83-36 concerning NUREG-0737 Items II.B.3, Post-Accident Sampling; II.F.1.1, Noble Gas Effluent Monitors; II.F.1.2, Sampling and Analysis of Plant Effluents; II.F.1.3, Containment High Range Monitor; and II.F.1.4, Containment Pressure Monitor.

Date of issuance: March 18, 1985.

Effective date: March 18, 1985.

Amendment Nos.: 108 and 45.

Facility Operating License Nos. DPR-57 and NPF-5: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 25, 1984, 49 FR 17860, and October 24, 1984, 49 FR 42822.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 18, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia

GPU Nuclear Corporation et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendments: June 8, 1981, as superseded February 17, 1984.

Brief description of amendments: This amendment adds Technical Specifications covering limiting conditions for operation and surveillance requirements for the plant snubbers installed on reactor safety systems.

Date of issuance: March 21, 1985.

Effective date: March 21, 1985.

Amendment No.: 106.

Facility Operating License No.: DPR-50. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 28, 1984, 49 FR 38401. Subsequent to the initial notice in the Federal Register, GPU Nuclear Corporation, by letter dated March 5, 1985, submitted a supplement to the February 17, 1984, application. This amendment does not include the additional Technical Specification changes proposed by the March 5, 1985, supplement. Those changes are being handled separately.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 28, 1984.

Brief description of amendments: The amendments make changes to the Technical Specifications for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, to require ice measurements and surveillance on boron concentration and on pH at 25 °C, and to change the restriction on ice accumulation on structures from 0.38 inches to 1/2 inches. The change to Unit 1 Technical Specifications changes ice condenser surveillance from 12 to 9 months, regroups the baskets under surveillance to be like Unit 2, requires ice condenser doors be demonstrated at once per 9 months for 50% of the doors rather than at 6 months for 25% of the doors, and makes editorial changes needed for clarity.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment Nos.: 83 and 66.

Facilities Operating License Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7992). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: None

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: August 28, 1984, supported by Exxon Nuclear letters dated July 7, 1984 and August 7, 1984.

Brief description of amendment: The amendment revises the Technical Specifications value for the nuclear enthalphy hot channel factor as a result of revised loss of coolant analyses.

Date of issuance: April 8, 1985.

Effective date: April 8, 1985.

Amendment No.: 67.

Facility Operating License No. DPR-74: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 28, 1984 (49 FR 38401).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: May 19, 1978, supplemented December 18, 1979, March 28, 1980, July 8, 1983, June 1 and December 7, 1984.

Brief description of amendment: The amendment deletes license condition 2C(3)(r) which required a seismic qualification of the safety injection system front panel, hot shutdown panel, auxiliary relay panels and switchboard and switchgear components, relays and pressure switches identified in Amendment No. 6 issued on June 16, 1978.

Date of issuance: April 9, 1985.

Effective date: April 9, 1985.

Amendment No.: 68.

Facility Operating License No. DPR-74: Amendment deletes License Condition 2C(3)(r).

Date of initial notice in Federal Register: September 21, 1983 (48 FR 43126) and renoted on February 27, 1985 (50 FR 7992).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1985.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 17, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to permit an increase in the DAEC rated power from current 1593 megawatt thermal (MWt) to a maximum steady state core power level of 1658 MWt. The review of the Extended Load Line Limit analysis presented in the licensee's application will be performed as a separate action.

Date of issuance: March 27, 1985.

Effective date: March 27, 1985.

Amendment No.: 115.

Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 24, 1984, 49 FR 42825.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Iowa Electric and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 7, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate changes for the new and spent fuel storage facilities in support of the Lead Test Assembly Program for Cycle 8 operation. The amendment: (1) Adds bundle k_{∞} to new fuel rack specifications, (2) replaces the axial enrichment requirement with an

equivalent k_{∞} , and (3) adds bases and references supporting these changes.

Date of issuance: April 11, 1985.

Effective date: April 11, 1985.

Amendment No.: 116.

Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7993).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 30, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to implement a reorganization which makes plant quality personnel more independent of plant operations personnel.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 2.

Facility Operating License No. DPR-29: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7995).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: May 1, 1984 supplemented and clarified by letter dated October 22, 1984.

Brief description of amendment: The revision to the Technical Specifications adds limiting conditions for operation, surveillance requirements and bases for the Remote Shutdown Panels.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 71.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 50 FR 7997.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: June 29, 1984, as supplemented December 3, 1984.

Brief description of amendment: The revision to the Technical Specification changes the limiting conditions for operation, surveillance requirements and supporting bases for the Emergency Cooling System and Accident Monitoring Instrumentation (TMI items II.B.1, II.F.1.3, II.F.1.4, II.F.1.5 and II.F.1.6).

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 72.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 50 FR 7997.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Dates of application for amendment: March 21, 1978 and supplements dated March 30, 1979 and October 18, 1984.

Brief description of amendment: The amendment revised the TS to incorporate the requirements of Appendix I of 10 CFR Part 50 as the Radiological Effluent Technical Specifications (RETS). The RETS provide new TS sections defining limiting conditions of operation and surveillance requirements for radiological liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; and radiological

environmental monitoring. In addition, some changes were made in administrative controls, specifically dealing with the Process Control Program (PCP) and the Offsite Dose Calculation Manual (ODCM).

Date of issuance: April 3, 1985.

Effective date: Within six months of the date of its issuance.

Amendment No.: 86.

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7979 at 7998).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pennsylvania Power and Light Company, Docket No. 50-387
Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Dates of application for amendment: May 18, 1984 as supplemented on September 20, 1984 and September 7, 1984.

Brief description of amendment: To update the Unit Technical Specifications to provide consistency between Unit 1 and Unit 2. Additionally, this amendment changes the required isolation times on the containment purge valves and removes the 50% blocking requirement.

Date of issuance: April 12, 1985.

Effective date: Upon issuance except as stated. In particular cases 90 days from the date of issuance.

Amendment No.: 36.

Facility Operating License No. NPF-14. Amendment revised the Technical Specifications.

Date of initial notices in Federal Register: December 31, 1984 (49 FR 50608), and (49 FR 50815).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 12, 1985. No comments on the proposed no significant hazards consideration determination were received.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power & Light Company, Docket No. 50-388, SSES #2,
Susquehanna Steam Electric Station, Unit 2 Luzerne County, Pennsylvania

Date of application for amendment: January 30, 1985.

Brief description of amendment: This amendment revises the Susquehanna Steam Electric Station, Unit-2 license to extend the scheduler requirements of License Condition 2.C.(7) for replacement/modification and test completion of equipment subject to the environmental qualification rule.

The extension is from March 31, 1985 to November 30, 1985.

Date of issuance: March 28, 1985.

Effective date: March 28, 1985.

Amendment No.: 9.

Facility Operating License No. NPF-21. Amendment revised the License.

Date of initial notice in Federal Register: February 22, 1985 50 FR 7423.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 14, 1984.

Brief description of amendments: These amendments delete the tabular listing (Table 3.11.D.1) of snubbers in the Peach Bottom Technical Specifications (TSs) as well as add criteria to the TSs specifying which snubbers are required to be operable and which snubbers are exempted from the snubber operability requirements.

Date of issuance: March 19, 1985.

Effective date: March 19, 1985.

Amendment Nos.: 107 and 111.

Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised Technical Specifications.

Date of initial notice in Federal Register: November 21, 1984, 49 FR 45961.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania,

Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: September 7, 1984.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to change the Maximum Average Planar Linear Heat Generator Rate (MAPLHGR) reduction factor to be applied during single loop operation, revises the Minimum Critical Power Ratio limits for Cycle 7 operation, provides MAPLHGR limits for two new fuel types for Cycle 7, modifies the Bases for the Standby Liquid Control System and revises the Design Features section of the TSs to permit use of Hybrid I Control Rods. This amendment permits the reloading and operation of Unit 2 for Cycle 7.

Date of issuance: March 19, 1985.

Effective date: March 19, 1985.

Amendment No.: 108.

Facility Operating License No. DPR-44. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 23, 1985 50 FR 3052.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 14, 1985.

Brief description of amendment: The amendment incorporated additional technical specifications for equipment added as a result of post-TMI improvements approved by the Commission in NUREG-0737. The amendment request was submitted in response to NRC Generic Letter 83-37. Items included in this amendment are: noble gas monitors (H.F.1.1); containment high-range radiation monitors (H.F.1.3); containment water level monitors (H.F.1.5); and control

room habitability requirements (III.D.3.4) (sulfur dioxide detectors).

Date of issuance: April 4, 1985.

Effective date: April 4, 1985.

Amendment No.: 105.

Facility Operating License No. NPF-1. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7979 at 50 FR 8000).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1985.

No significant hazards consideration comments received: No comments received.

Location of Local Public Document Room: Multnomah County Library, 801 SW 10th Avenue, Portland, Oregon.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: November 24, 1981, as supplemented August 13, 1984.

Brief description of amendment: The amendment revises the Technical Specifications related to the hydraulic snubbers by including additional operability and surveillance requirements.

Date of issuance: April 2, 1985.

Effective date: April 2, 1985.

Amendment No.: 52.

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1983 (48 FR 38419) and February 27, 1985 (50 FR 8001).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: July 8, 1983, as supplemented December 3, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to provide for redundancy in decay heat removal capability in all modes of operation.

Date of issuance: April 8, 1985.

Effective date: April 8, 1985.

Amendment No.: 53.

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8002).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: April 13, 1982, as supplemented August 31, 1984, October 31, 1984, and January 15, 1985.

Brief description of amendment: The amendment revises the Technical Specifications related to degraded grid voltage conditions. The licensee's submittals dated October 31, 1984 and January 15, 1985 provided results of voltage verification tests and 480V motor starters transient analyses and information regarding monthly surveillance testing of the 480V loss of voltage relays, respectively. These submittals served to only clarify the previous amendment requests dated April 13, 1982, and August 31, 1984 and did not change the proposed Technical Specifications. Therefore, no substantive changes were made by the licensee's October 31, 1984, and January 15, 1985 submittals.

Date of issuance: April 9, 1985.

Effective date: April 9, 1985.

Amendment No.: 54.

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8001).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1985.

Significant hazards consideration comments received:

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 18, 1985.

Brief description of amendments: The amendments extend the implementation

time for Amendments 59 and 28 for Salem Units 1 and 2, respectively, to 105 days after issuance.

Date of issuance: April 9, 1985.

Effective date: April 9, 1985.

Amendment Nos.: 61 and 32.

Facility Operating License Nos. DPR-70 and DPR-75: Amendments revised the Licenses.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8004).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1985.

No significant hazards consideration comments have been received.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna, Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 5, 1984.

Brief description of amendment: The amendment deletes the description of the battery charger configuration, but retains the required battery charger capacity and operability.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 3.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8004).

The Commission's related evaluation of the amendment is contained in a letter dated April 1, 1985. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: March 28, 1984, as supplemented October 4, 1984 (withheld from public disclosure).

Brief description of amendment: The amendment revises the license to incorporate Amendment 12 to the Rancho Seco physical security plan.

Date of issuance: March 18, 1985.

Effective date: March 18, 1985.

Amendment No.: 64.

Facility Operating License No. DPR-54: Amendment revised the license.

Date of initial notice in Federal Register: December 31, 1984, 49 FR 50822.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 9, 1984.

Brief description of amendment: The amendment deleted Facility Operating License Condition 2.C.(10) relating to the US/International Atomic Energy Agency safeguards program.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 65.

Facilities Operating License No. DPR-54: Amendment revised the license.

Date of initial notice in Federal Register: February 27, 1985, 50 FR 8005.

The Commission's related evaluation of the amendment is contained in the Commission's letter to the licensee dated April 1, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: November 29, 1984, as supplemented January 8, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to add a new specification regarding requirements for circuit breakers for non-Class 1E cable.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 38.

Facility Operating License No. NPF-12: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: November 29, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to add a note to Table 3.3-3 stating that "purge exhaust monitor not required when purge exhaust is closed."

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 39.

Facility Operating License No. NPF-12: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 7, 1985 (50 FR 8006).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: October 19, 1984.

Brief description of amendment: The amendments change the Technical Specifications to permit removal of the secondary containment static pressure limiting system.

Date of issuance: April 5, 1985.

Effective date: April 5, 1985.

Amendment Nos.: 116, 111 and 86.

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1984 49 FR 50825.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of application for amendment: September 22, 1983, as supplemented March 20, 1985.

Brief description of amendment: The amendment changes the Technical Specification to revise the curves in

Figure 3.6-1 of reactor pressure versus minimum temperature for hydrostatic pressure testing, heatup and cooldown and core operations to account for potential reduction in vessel metal ductility as a result of accumulated radiation exposure. This amendment revises the curve for Browns Ferry Unit 3 for the balance of Cycle 6 operations (thru November 30, 1985) and is in partial response to the licensee's application. Final response to the application, which will include Units 1 and 2, will be the subject of future correspondence.

Date of issuance: April 12, 1985.

Effective date: April 12, 1985.

Amendment No.: 87.

Facility Operating License No. DPR-68: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 22, 1983 48 FR 52831.

The March 20, 1985 submittal need not be renounced since it only provided supplemental information requested by the staff on material compositions. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

The Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 20, 1984.

Brief description of amendment: The amendment adds limiting Conditions for Operation and Surveillance Requirements which relate to the reactor coolant system hot leg high point vents and pressurizer. In addition, a Bases Section for high point vents has been added.

Date of issuance: April 3, 1985.

Effective date: April 3, 1985.

Amendment No.: 85.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985, 50 FR 8009.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application for amendment: December 28, 1984.

Brief description of amendment: The amendment has been revised to incorporate a November 30, 1985 deadline for completion of environmental qualification of electrical equipment important to safety instead of the presently imposed deadline of March 31, 1985.

Date of issuance: March 28, 1985

Effective date: March 28, 1985.

Amendment No.: 5.

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 23, 1985 (50 FR 3056).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation, dated March 28, 1985. No significant hazards consideration comments received: No.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and Olin Library of Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 12, 1985.

Brief description of amendment: The technical specifications have been revised to allow for a delay of 6 months in the due dates of the first three containment vessel tendon surveillances.

Date of issuance: April 4, 1985.

Effective date: April 4, 1985.

Amendment No.: 6.

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 8024).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1985. No significant hazards consideration comments received: No.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and Olin Library of Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 15, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to provide alternative staffing requirements should the Operations Supervisor not possess a Senior Reactor Operator License.

Date of issuance: April 1, 1985.

Effective date: April 1, 1985.

Amendment No.: 87.

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 50 FR 8010.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of Application for amendment: January 11 and January 17, 1985 and as supplemented on January 30 and March 8, 1985.

Brief description of amendment: This amendment revises the WNP-2 license to extend the scheduler requirements of License Condition 2.C.(28) for replacement/modification and test completion of equipment subject to environmental qualification rule. The extension is from March 31, 1985 to November 30, 1985. This amendment will also change Paragraph 3.(b) of Attachment 2 to the license to extend the deadline for implementation of R.G. 1.97 requirements (installation or upgrade) for flux monitoring to the first refueling outage.

Date of issuance: March 28, 1985.

Effective date: March 28, 1985.

Amendment No.: 8.

Facility Operating License No. NPF-21: Amendment revised the License.

Date of initial notice in Federal Register: February 22, 1985, 50 FR 7424 and 50 FR 7426.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of Application for amendment: February 7, 1985.

Brief description of amendment: Permits testing of the main steam system while the plant is in hot shutdown conditions.

Date of issuance: April 4, 1985.

Effective date: April 4, 1985.

Amendment No.: 61.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 4, 1985 (50 FR 8688).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket No. 50-268, Point Beach Nuclear Plant Unit No. 1, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendment: November 9, as modified November 14, 1984.

Brief description of amendment: The amendment incorporated additions to the "Overtemperature delta T" and "Overpower delta T" equations of Technical Specifications 15.2.3.1.B(4) and 15.2.3.1.B(5), respectively. These additions allow for the use of new time constants for temperature lag considerations associated with new resistance temperature detectors.

Date of issuance: April 4, 1985.

Effective date: 20 days from the date of issuance.

Amendment No.: 90.

Facility Operating License No. DPR-24: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 23, 1985 (50 FR 3047 at 3057).

The Commission's related evaluation is contained in a Safety Evaluation dated April 4, 1985.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: March 16, 1984 as modified September 25, 1984.

Brief description of amendments: The amendments revised Technical Specifications relating to control of heavy loads over spent fuel and revised the "Administrative Controls" section of the Technical Specifications to reflect position title changes and staffing upgrades. The amendments also made many editorial changes and typographical error corrections.

Date of issuance: April 8, 1985.

Effective date: 20 days from date of issuance.

Amendment Nos.: 91 and 95.

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 20, 1984 49 FR 25350 at 25381. Renoticed January 23, 1985 50 FR 3047 at 3057.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1985.

No significant hazards consideration comments received: No comments were received.

Local Public Document Room location: Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland this 17th day of April 1985.

For the Nuclear Regulatory Commission,

James R. Miller,

Chief, Operating Reactors Branch No. 3,
Division of Licensing.

[FR Doc. 85-9858 Filed 4-22-85; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; System of Records, Amendment

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Amendment to System PBGC-6.

SUMMARY: This document amends Privacy Act System PBGC-6 to permit disclosure of names, addresses and telephone numbers of participants and beneficiaries of certain pension plans and of information pertaining to debts of such participants and beneficiaries to private collection firms and agencies as a routine use.

EFFECTIVE DATE: This amendment to System PBGC-6 will become effective without further notice on May 23, 1985, unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Send comments to the Legal Department, Code 250, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C., 20006. Written comments will be available for public inspection at the PBGC, Suite 7000, at the same address, on weekdays between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart E. Bernsen, Attorney, Legal Department, Code 250, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-4895 (202-254-8010 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is establishing a new routine use of Privacy Act System PBGC-6 to allow, in certain instances, disclosure to private collection firms and agencies of names, address and telephone numbers of participants and beneficiaries and of information pertaining to debts of participants and beneficiaries of pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1301 *et seq.* (1982), for which the PBGC has become trustee. The PBGC has found on occasion a need to collect claims due and owing to such pension plans. This includes situations where plan participants or beneficiaries have been overpaid benefits or have borrowed amounts from a plan and have failed to make or are delinquent in making repayment.

System PBGC-6, Plan Participant and Beneficiary Data—PBGC, contains, among other information, the name, address, telephone number, time of plan participation and participant status of participants and beneficiaries in terminated pension plans covered by Title IV of ERISA. 47 FR 58404 (December 30, 1982).

Establishment of a new routine use, number 4, of System PBGC-6 will allow the PBGC to increase the efficiency and effectiveness of its debt collection program by permitting the PBGC to utilize private collection firms and agencies. The PBGC would engage such private services, when necessary, to supplement its efforts to collect overdue plan loans and to recover overpayments made to plan participants and beneficiaries in situations where, at the

discretion of the PBGC, it may recover overpayments by methods other than recoupment under 29 CFR 2623.11(a), 50 FR 3892 (January 29, 1985).

Individual privacy is protected by requiring the collection firm or agency to return the participant or beneficiary name, address, and telephone number and the name of the relevant plan at the conclusion of the debt collection effort and by requiring that the PBGC and the debt collection firm or agency contractually restrict the use of the disclosed information.

The new routine use number 4 reads as follows:

4. Disclosure of names, addresses and telephone numbers of participants and beneficiaries and of information pertaining to debts of such participants and beneficiaries may be made to a debt collection firm or agency to collect a claim. Disclosure shall be made only under a contract with the PBGC which properly binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned to the PBGC at the conclusion of the debt collection effort.

Section 552a(e)(11) of the Privacy Act requires that notice of an intended routine use of records be published at least 30 days prior to the implementation of the use and that the public be given an opportunity to comment. Interested persons are invited to submit written data, views or comments on the proposed amended routine uses, which may be changed in light of the comments received. If no changes are made, and unless PBGC publishes a notice to the contrary, the proposed amended routine uses will become final 30 days after publication of this notice.

Based on the foregoing, PBGC hereby revises System PBGC-6 as follows:

PBGC-6

SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

SYSTEM LOCATIONS:

Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries in

terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, address, telephone number, sex, social security number and other social security data, date of birth, date of hire, salary, marital status, time of plan participation, participant status, pay status, benefit data, health data, and insurance information where plan benefits are guaranteed by private insurers. The individual records listed herein are included only as pertinent or applicable to the individual plan participant or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1322 and 1341.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosed to third parties, such as banks, insurance companies and trustees, for the purpose of paying benefits to plan participants and beneficiaries.
2. Disclosure, in furtherance of proceedings under Title IV of the Employee Retirement Income Security Act of 1974, of plan participant and beneficiary data to an employer who maintained the plan, including any predecessor or successor employers and to any member of a controlled group of which the employer is a part.
3. Disclosure may be made to an official of a labor organization which is the duly recognized collective bargaining representative of the individual about whom the request is made.
4. Disclosure of names, addresses and telephone numbers of participants and beneficiaries and of information pertaining to debts of such participants and beneficiaries may be made to a debt collection firm or agency to collect a claim. Disclosure shall be made only under a contract with the PBGC which properly binds any such contractor or employee of any such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned to the PBGC at the conclusion of the debt collection effort.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by plan and participant and/or beneficiary name.

SAFEGUARDS:

Manual records are maintained in lockable file cabinets which are locked after office hours, in areas of restricted access. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Records for vested plan participants are destroyed one year after final payment to, or death of, the last participant and/or beneficiary in the plan. Records for nonvested plan participants are destroyed 7 years after written notification to the participant.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Benefit Payments
Department, Pension Benefit Guaranty Corporation, 2020 K Street, NW.,
Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORDS ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Plan administrators and Social Security Administration.
David M. Walker,
Acting Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 85-9718 Filed 4-22-85; 8:45 am]

BILLING CODE 7708-01-M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Computer Matching Program; VA Compensation and Pension Records/RRB Retirement and Survivor Benefit Records

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (RRB) hereby gives notice that it is proposing to conduct a matching program with the Veterans Administration (VA). The match will compare the VA's compensation and

pension master file with the RRB's master file of retirement and survivor beneficiaries. The purpose of the match is to provide the VA with railroad retirement and survivor benefit data for persons who are in receipt of both VA income-dependent benefits and railroad retirement or survivor benefits. The goals of the matching program are to adjust the award of VA benefits if RRB benefits were not reported or were incorrectly or incompletely reported and to recoup the amount of any overpayments resulting from payment of VA benefits in excess of entitlement.

As prescribed by the OMB Revised Guidelines for the Conduct of Matching Programs, published at 47 FR 21656-58 (May 19, 1982), the text of the matching program report follows. In accordance with these guidelines, copies of this report have been set to OMB, the Speaker of the House, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT:
LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Telephone (312) 751-4548.

Dated April 16, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

Report of Matching Program: VA Compensation and Pension Records/RRB Retirement and Survivor Benefit Records

A. Authority

38 U.S.C. 3006

B. Description of the Matching Program

1. *Organizations involved.* The involved components are the Railroad Retirement Board (RRB) and the Veterans Administration (VA).
2. *Purpose.* Veterans Administration (VA) pension benefits for veterans, surviving spouses and children of veterans and dependency and indemnity compensation benefits for parents of veterans are payable at a rate prescribed by law but subject to reduction by the amount of the annual income of the payee (38 U.S.C. 415, 521, 541, and 542). Benefits paid under the Railroad Retirement Act are considered as income for the purposes of reducing the amount of these VA benefits. The purposes of the matching program are to identify VA beneficiaries who are also receiving railroad retirement or survivor benefits and to furnish for such dual beneficiaries the amount of the RRB retirement or survivor benefits that they are entitled to receive. The goals of the matching program are to adjust the award of VA benefits if RRB benefits

were not reported or were incorrectly or incompletely reported and to recoup the amount of any overpayments resulting from payment of VA benefits in excess of entitlement.

3. *Proceedings.* The VA will furnish the RRB with an extract file from the VA Compensation and Pension (C&P) master file. An extract record will be prepared for each VA beneficiary who is receiving income-dependent benefits (Pension or Parent DIC). An extract will also be generated for dependents of VA beneficiaries if the dependent's income is a factor in determining the beneficiary's payment status and the Social Security Number (SSN) of the dependent is present. The extract file will be sorted into SSN sequence and mailed to the RRB.

The RRB will match VA's extract file against its research records of retirement and survivor benefits. The match will be on SSN solely. For each hit, the RRB will furnish VA with the total amount of RRB monthly benefits paid. In the event an individual is receiving benefits on more than one RRB account, the amount will be combined into a single amount for transmittal to VA. The RRB amount to be transmitted will be the amount paid after all permanent reductions have been made (e.g. age, SSA benefit, actuarial adjustment) but before any temporary deductions have been made (e.g. partial withholding for excess earnings, withholding for income tax, SMI premiums). The RRB benefit amount on hits will be entered in the VA extract tape, which will be returned to the designated VA processing facility.

The VA will process RRB data as follows: (a) For VA beneficiaries on whom receipt of RRB benefits is already a matter of record with the VA, the VA will enter the amount of RRB benefits on its records to reflect the amount of such benefits which the RRB has furnished; however, for each VA beneficiary whose verified RRB benefit amount differs from that on VA records, the VA will advise its beneficiary of the amount of RRB payments reported to the VA by the RRB and of any proposed award adjustment before adjusting any VA payment. If a VA beneficiary disputes the amount or effective date of RRB benefits, the VA shall contact the RRB for verification. The VA will provide the beneficiary with the exact amount of RRB benefits furnished so that the beneficiary can dispute any discrepancy. (b) For VA beneficiaries on whom receipt of RRB benefits is not already a matter of record with the VA,

the VA shall contact the RRB for verification. With respect to any award action which the VA intends to take regarding any beneficiary covered by the procedures outlined above, the VA shall comply with due process provisions of applicable law prior to making any adjustments in VA benefits based on information furnished by the RRB.

C. Records to be Matched

RRB will match its research retirement and survivor master files with the VA extract file of its Compensation and Pension (C&P) master file. The RRB research and survivor master files are covered by Privacy Act systems of records RRB-25 and RRB-26, which were last published in their entirety at 42 FR 47483-84 dated September 20, 1977. The VA's Compensation and Pension master file is covered by VA Privacy Act systems of records Compensation, Pension, Education and Rehabilitation—58VA21/22/28, which was last published in its entirety at 47 FR 372-75 dated January 5, 1982.

D. Period of the Match

It is expected that the first match will take place before July 1, 1985. Subsequent matches will take place after each scheduled legislative increase in RRB benefits. Such increases are anticipated to occur on an annual basis; thus the matching program is expected to be an annual one; however, legislative changes could result in less or more frequent matches.

E. Security Safeguards

The RRB will maintain such administrative, technical, and physical security safeguards for the VA file while in the possession of the RRB as it does for its own files. Records are maintained in areas not accessible to the public and are not permitted to be removed from headquarters without authorization. All magnetic tapes not in use or not in security storage are housed in a tape library room that is locked during off-duty hours and to which access is restricted. Access to the computer room is also restricted and is locked during off-duty hours. These same safeguards will apply to the VA extract file while it is in the possession of the RRB.

The VA security safeguards for RRB information on "hit individuals" furnished to the VA and incorporated by the VA in its Compensation, Pension, Education and Rehabilitation Records

shall be the same as for other personal information in this system of records; they are set forth at 47 FR 375, dated January 5, 1982.

F. Disposition of Records

The VA extract tape will be returned to the VA within 30 days after each match is completed. Information extracted from RRB files regarding "hits" will be incorporated into VA Privacy Act system of records Compensation, Pension, Education and Rehabilitation Records and will be disposed of according to established record retention schedules for such records.

G. Other Comments

1. *Background of the Match:* In 1982, the VA and the RRB participated in a statistical matching program; its purpose was to determine whether an ongoing data exchange would be cost justified. On the basis of the hits obtained using a 10 percent sample of VA's Compensation and Pension master file, the VA determined that an ongoing data exchange would be cost justified and requested RRB's participation.

2. *Routine Uses:* The RRB will publish in the *Federal Register* a proposed routine use for its Privacy Act systems of records RRB-25 and RRB-26 that will permit disclosure of benefit information from these systems to the VA. Likewise, the VA will publish in the *Federal Register* a proposed routine use for its Privacy Act system of records Compensation, Pension, Education, and Rehabilitation (58VA21/22/28) that will permit disclosure of identifying information from this system to the RRB. The proposed match will not begin until the Privacy Act requirements governing routine uses have been met: namely, that the public be given 30 days in which to comment on the proposed routine use before it is effective, and, if comments are received, that the agency take them into consideration before making any disclosures pursuant to the routine uses.

3. *RRB Use of VA's Extract File:* The RRB will use the VA extract file only to match with the RRB file agreed to; it will not use the VA file to extract information concerning "non-hit" individuals for any purpose; and it will not duplicate the file, produce hard copy from it, or disseminate it within or outside the agency unless specifically authorized in each instance by the VA.

[FR Doc. 85-9757 Filed 4-22-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13779]

Application and Opportunity for Hearing; Security Pacific Corp.

April 17, 1985.

Notice is hereby given that Security Pacific Corporation, a Delaware corporation (the "Applicant"), has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Chemical Bank, a New York corporation ("Chemical Bank") under an indenture dated as of August 1, 1984 (the "1984 Indenture") with respect to the Floating Rate Subordinated Capital Notes Due August 15, 1996 issued thereunder (the "1984 Notes"), and an indenture of the Applicant dated as of February 15, 1985 (the "1985 Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as Trustee under the 1984 Indenture with respect to the 1984 Notes or under the 1985 Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) In 1984, the Applicant entered into the 1984 Indenture, with Chemical Bank as Trustee, providing for the issuance, from time to time, of the Company's unsecured subordinated debentures, notes or other evidences of indebtedness in one or more series (the "Securities"). The 1984 Indenture was filed as Exhibit 4(b) to a registration statement on Form S-3 (File No. 2-92559) (the "Registration Statement"),

which registration statement together with a Statement of Eligibility and Qualification of the Trustee on Form T-1 (File No. 22-13219) was filed with the Securities and Exchange Commission on August 3, 1984. On August 7, 1984, the Commission declared the Registration Statement effective and the Indenture was qualified. On August 15, 1984, the Applicant issued \$250,000,000 aggregate principal amount of the 1984 Notes under the 1984 Indenture. The 1984 Notes were offered by a prospectus dated August 7, 1984, as supplemented by a prospectus supplement dated as of the same date.

(2) The Applicant is not in default in any respect under the 1984 Indenture or under any other existing indenture.

(3) On February 15, 1985 and February 19, 1985, respectively, the Applicant and Chemical Bank executed the 1985 Indenture, which was then delivered. On February 21, 1985, the Applicant issued \$250,000,000 aggregate principal amount of Floating Rate Subordinated Capital Notes Due 1997 (the "1985 Notes"). In view of the manner of the offer and sale contemplated by the underwriting agreement and related arrangements to restrict offers and sales thereof in the United States or to United States persons, the 1985 Notes were not registered under the Securities Act of 1933 (the "Securities Act") and the 1985 Indenture was not qualified under the Trust Indenture Act of 1939.

(4) Trusteeship under the 1984 Indenture with respect to the 1984 Notes and under the 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as Trustee under the 1984 Indenture with respect to the 1984 Notes or the 1985 Indenture.

The 1984 Notes and the 1985 Notes are both wholly unsecured. They are both subordinate and junior in right of payment to all senior indebtedness of the Applicant and rank *pari passu*. Payment of principal may not be accelerated under either Indenture except in the case of certain events of bankruptcy, insolvency, reorganization or the like.

(5) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than May 13, 1985, request in writing that a hearing be held on such matter, stating the nature of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9707 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-10-M

[File No. 1-6322]

Issuer Delisting; Application To Withdraw From Listing and Registration; Medalist Industries, Inc., Common Stock (\$1 Par Value)

April 16, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Medalist Industries ("Company") has determined that the listing of its shares on the National Association of Securities Dealers Automated Quotations National Market System would be of greater benefit to its shareholders than its present listing on the Exchange. The Company has complied with the rules of the Exchange and the Exchange poses no objection in this matter.

Any interested person may, on or before May 7, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the

Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-9705 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations:
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Cincinnati Stock Exchange,
Inc.**

April 16, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Burlington Coat Factory Warehouse Corporation

Common Stock, \$1 Par Value (File No. 7-8389)

James Riber Corp. of Virginia

Common Stock, \$10 Par Value (File No. 7-8390)

Kenai Corp.

Common Stock, \$0.01 Par Value (File No. 7-8391)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 7, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-9704 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations:
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Midwest Stock Exchange, Inc.**

April 16, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Biocraft Laboratories

Common Stock, \$0.01 Par Value (File No. 7-8376)

Herman's Sporting Goods, Inc.

Common Stock, \$0.01 Par Value (File No. 7-8377)

Dynallectron Corporation

Capital Stock, \$10 Par Value (File No. 7-8392)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 7, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-9703 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Pacific Stock Exchange, Inc.**

April 18, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of section 12(f)(1)(C)¹ of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Damson Oil Corporation

Common Stock, \$40 Par Value (File No. 7-8378)

New York Times Company

Class A Common Stock, \$10 Par Value (File No. 7-8379)

Western Digital

Common Stock, \$10 Par Value (File No. 7-8380)

Frank B. Hall & Co., Inc.

Common Stock, \$50 Par Value (File No. 7-8381)

General Re Corporation

Common Stock, \$50 Par Value (File No. 7-8382)

Mitel Corporation

Common Stock, No Par Value (File No. 7-8383)

Noble Affiliates, Incorporated

Common Stock, \$3.33 Par Value (File No. 7-8384)

Revco D.S. Incorporated

Common Stock, \$1 Par Value (File No. 7-8385)

Skyline Corporation

Common Stock, \$0.0277 Par Value (File No. 7-8386)

Torchmark Corporation

Common Stock, \$1 Par Value (File No. 7-8387)

B.A.T. Industries, plc

Common Stock (File No. 7-8388)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.²

Interested persons are invited to submit on or before May 7, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

¹ Application under section 12(f)(1)(C) is made only with respect to B.A.T. Industries, plc.

² While B.A.T. Industries, plc is reported in the consolidated transaction reporting system, it is not currently listed on any national securities exchange. B.A.T. Industries, however, is traded on the American Stock Exchange ("Amex") pursuant to unlisted trading privileges, and the application of the Pacific Stock Exchange is based on such unlisted trading on the Amex.

Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9706 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission Office of Consumer Affairs, Washington, D.C. 20549.

Amendment, Form TA-1, Rule 17Ac2-1(c), 270-95

New Form TA-2, Rule 17Ac2-2, 270-298

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission has submitted amendments to Form TA-1 (17 CFR 249b.100), and Rule 17Ac2-1(c) (17 CFR 240.17Ac2-1(c)), both previously having been granted clearance, as well as new Form TA-2 and new Rule 17Ac2-2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Form TA-1 is to be used by transfer agents to register with the Commission, Comptroller of the Currency, the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation. Form TA-1 is also to be used by transfer agents to amend their registration. Part II of Form TA-1, which requires transfer agents to provide certain background information regarding control persons, is only to be completed by transfer agents registering directly with the Commission. Rule 17Ac2-1(c) requires a transfer agent to correct information submitted on Form TA-1 which becomes inaccurate, misleading or incomplete within sixty days following the date on which the information became inaccurate, misleading or incomplete. The prior Rule 17Ac2-1(c) required correction of such information within twenty-one days. Rule 17Ac2-2 requires registered transfer agents to file an annual report of their business activities on Form TA-2. Form TA-2 is to be filed with the

transfer agent's appropriate regulatory agency, which would be either the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation. Transfer agents who satisfy the criteria set forth in 17 CFR 240.0-10(h) (restated in Rule 17Ac2-2) would only be required to complete Page One and the execution section of Form TA-2.

Submit comments on OMB Desk Officer: Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

April 16, 1985.

[FR Doc. 85-9774 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14474; 612-6069]

ISFA Mortgage Funding Corp.; Application

April 16, 1985.

Notice is hereby given that ISFA Mortgage Funding Corporation ("Applicant"), 5404 Cypress Center Drive, Cypress Center One, Tampa, Florida 33609, a limited purpose corporation formed under Delaware law, filed an application on March 5, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant has recently been formed as a wholly-owned subsidiary of ISFA Holding Company, Ltd. ("ISFA Holding") of Tampa, Florida. ISFA Holding, which is primarily owned by affiliates of thrift institutions, provides a variety of specialized broker-dealer, investment advisory and financial services to thrift institutions and other entities engaged in real estate and mortgage activities. The limited purpose of Applicant's organization is to facilitate the financing of long-term residential mortgages on one-to four-family residences; it will not engage in any other unrelated business or investment activities. Applicant will be providing a source of funds to entities engaged in mortgage finance ("Thrifts") by issuing bonds collateralized by mortgages and/or mortgage-backed securities, and by entering into funding

agreements with respect to such mortgages and mortgage-backed securities.

Applicant plans to issue its bonds ("Bonds") in series, each to be separately secured, primarily by "mortgage collateral." This collateral may include conventional mortgage loans, mortgage loans insured by the Federal Housing Administration ("FHA Loans"), or mortgage loans guaranteed by the Veterans' Administration ("VA Loans"), "fully-modified pass-through" mortgage-backed certificates, fully guaranteed by the Government National Mortgage Association ("GNMA Certificates"), Mortgage Participation Certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), Guaranteed Mortgage Pass-Through Certificates issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage pass-through certificates, or mortgage-collateralized obligations issued by any person or entity; or other interests in mortgages ("Other Mortgage Certificates"). The Bonds may also be collateralized by certain proceeds accounts, debt service funds, reserve funds and insurance policies (thus, the term "Pledged Loans" includes conventional mortgage loans, FHA loans and VA Loans; "Mortgage Certificates" includes GNMA Certificates, FHLMC Certificates, FNMA Certificates and Other Mortgage Certificates; and "Mortgage Collateral" includes Mortgage Certificates and Pledged Loans). Each Pledged Loan will be a mortgage loan secured by a first mortgage or deed of trust of a one- to four-family residence, and each Mortgage Certificate will evidence an undivided interest in a pool of such mortgage loans.

Each series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee ("Trustee"), to be supplemented by one or more indentures. The Bonds will be sold to institutional or retail investors through one or more investment banking firms; certain series of the Bonds will be registered under the Securities Act of 1933, while others will be sold in transactions exempt from such registration. Indentures for public offerings will be subject to the provisions of the Trust Indenture Act of 1939. Each series of Bonds is expected to be structured so that it will receive one of the two highest ratings from one or more nationally-recognized rating agencies.

Thrifts, and limited purpose finance subsidiaries of such Thrifts ("Finance

Subsidiaries") may either sell, or pledge, Mortgage Collateral to Applicant, or to an affiliate of Applicant ("Affiliate") in connection with the issuance of the Bonds. In the case of a sale, the Thrift may receive, in exchange for Mortgage Collateral, all or part of the net proceeds of the issuance of a related series of Bonds; where such sale is to Affiliate, Applicant will enter into a "funding agreement" with Affiliate, each such funding agreement to be secured by a pledge of the Mortgage Collateral to Applicant by Affiliate.

In the case of a pledge, all or a part of the net proceeds of the issuance of a related series of Bonds will be loaned by Applicant to Affiliate or a Finance Subsidiary as consideration for the transfer of Mortgage Collateral to Applicant. The Finance Subsidiary will re-distribute the loan proceeds to its parent Thrift, to be used to amortize indebtedness which the Thrift has incurred in funding or acquiring mortgage loans. Affiliate will use some or all of such proceeds to purchase additional Mortgage Collateral. Applicant will acquire a security interest in the pledged Mortgage Collateral, and in certain other collateral, including debt service funds, reserve funds, proceeds accounts and insurance policies (collectively referred to hereinafter as "Permitted Collateral"). Mortgage Collateral securing the Bonds will generally remain fixed for the life of the Bonds of the related series. The terms and conditions of the pledges of Permitted Collateral will be set forth in a "funding agreement" ("Funding Agreement"), between a Finance Subsidiary or Affiliate, and Applicant. Permitted Collateral will be re-pledged by Applicant to the Trustee, and produce a cash flow sufficient to service the obligation of the Finance Subsidiary or Affiliate to Applicant, and the correlative obligation of Applicant to the Bondholders.

Pledged Loans will be served by the Thrift associated with such Pledged Loan, or by another servicer acceptable to Applicant. An independent mortgage company will be the master servicer of each Pledged Loan, and each such servicer and/or master servicer will have the power and obligation to foreclose against the assets securing any delinquent Pledged Loan, liquidate those assets, pursue any mortgage insurance or guaranty claims, collect prepayments of principal and collect any insurance proceeds. Amounts so collected will be paid to the Trustee as the holder of each such Pledged Loan.

Certain series of Bonds may contain optional or special redemption

provisions. A series may provide for involuntary redemptions, as well, to the extent that principal payments on Mortgage Collateral cannot be invested at a rate which will provide sufficient income to service on the Bonds. In addition, all or a portion of the Bonds of a series may be subject to redemption at the option of Applicant at any time on or after the anniversary of the original issue date for such Bonds specified in the Indenture and disclosed in the prospectus or private placement memorandum relating to that series, or at any time after the aggregate outstanding principal amount of such series is equal to 20% or less of the aggregate original principal amount of the Bonds of such series. The terms of each offering may also provide for redemptions at the option of Bondholders to the extent that payments received on the Mortgage Collateral are available for such redemptions. Under no circumstances will Bondholders be entitled to compel the liquidation of the Mortgage Collateral in order to redeem Bonds prior to their maturity. Applicant asserts that the foregoing redemption provisions notwithstanding, the Bonds should not be regarded as "redeemable securities" within the definition of such term in section 2(a)(32) of the Act.

Applicant believes that it does not fall within the definition of an investment company found in section 3(a) of the Act, even though its assets may consist principally of evidences of indebtedness of Finance Subsidiaries and Affiliate. Applicant argues that its primary activity will be the facilitation of the sale of one- to four-family homes through the financing of residential mortgages, rather than "investing, reinvesting, owning, holding or trading in securities . . ."; in any event, it wishes to remove the possibility that such evidence of indebtedness might, at a later date, be held to be "investment securities" as that term is used in section 3(a)(3) of the Act.

Applicant contends that all of the activities in which it proposes to engage could be conducted directly by Affiliate, without registration under the Act, in accordance with the exception to the definition of investment company afforded by section 3(c)(5)(C) of the Act, which removes companies which do not issue redeemable securities, face-amount certificates of the installment type, or periodic payment plan certificates and which are primarily engaged in the business of "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate," from the purview of the Act. Although Applicant will not acquire

legal title to Mortgage Collateral where such title is retained by a Finance Subsidiary or Affiliate, Applicant states that it will acquire a security interest in such Mortgage Collateral to secure repayment of a loan to such Finance Subsidiary or Affiliate, and will therefore hold direct or indirect liens on, and other interests in real estate.

Applicant notes, as well, that a number of large thrift institutions and home builders have issued mortgage-backed bonds through wholly-owned finance companies, and that none of these entities has been required to register under the Act. Applicant submits that there is no reason to be found in public policy which would require it to register under the Act merely because its purpose is to enhance the financing efforts of smaller thrift institutions in achieving comparable economies of scale, or because Applicant is providing medium-sized and larger thrift institutions with an opportunity to reduce their reinvestment risk and their interest-rate exposure by participating in a regular financing program with small amounts of collateral.

Accordingly, the exemption of Applicant from the Act is both necessary and appropriate in that Applicant is not an entity to which the Act was intended to apply, and Applicant's pursuits will enhance the national goal expressly articulated by Congress of expanding financing for housing.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9772 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21943; File No. SR-NASD-85-8]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Filing of Proposed Rule
Change and Order Granting
Accelerated Approval of Proposed
Rule Change**

The National Association of Securities Dealers, Inc. ("NASD"), submitted on April 1, 1985, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to conform the NASD's position and exercise limits for members trading in both conventional and/or exchange traded options to the recently increased limits of the options exchanges.

**I. Description of the Proposal, Its
Purpose and Statutory Basis**

On March 29, 1985, the Commission issued an order approving increased limits for individual stock options traded on the American ("Amex"), Chicago Board Options ("CBOE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges. The new limits are either 3,000, 5,500, or 8,000 contracts, depending on certain criteria related to the trading volume and public float of the underlying security.³ The NASD's proposed amendments will conform the NASD's limits⁴ for access firms⁵ dealing in exchange traded options, and all members dealing in conventional options on securities which underlie exchange-traded options, to the new limits. In addition, the proposed amendments will raise position and exercise limits for conventional options on securities that do not underlie exchange-traded options from 2,500 to 3,000 contracts.⁶

The NASD states that the proposed rule change is consistent with section 15A(b)(6) of the Act, in that the proposed amendments, which are identical to those promulgated by the options exchanges, will reduce the

potential for manipulation or disruption of the market for options and underlying securities and, at the same time, provide uniformity in the options markets.

II. Solicitation of Comments

The Commission is publishing this release to solicit comment on the proposed rule change described in section I, above. Persons interested in commenting on this proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the *Federal Register*. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the proposed rule change, all subsequent amendments, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings are also available at the NASD.

III. Approval of the Proposal

As indicated above, NASD's proposal to increase position and exercise limits for individual stock options is essentially identical to proposals by the Amex, CBOE, PSE and Phlx that the Commission recently adopted. For the reasons discussed in the order approving the proposals by the options exchanges, the Commission finds that the NASD's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that insofar as the proposal would alter the existing NASD position and exercise limit rules applicable to transactions in conventional options and transactions in exchange-traded options by access firms, it is substantially the same as the Amex, CBOE, PSE and Phlx proposals to increase position and exercise limits that were recently published for comment, considered and approved by the Commission. In light of this fact, and to reduce the potential for confusion by providing uniform regulation of options transactions among the self-regulatory organizations, accelerated approval is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

April 12, 1985.

[FR Doc. 85-9773 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21955; SR-NASD-85-2]

**Self-Regulatory Organizations; NASD;
Order Approving Proposed Rule
Change**

April 17, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), submitted a proposed rule change on March 5, 1985, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend several sections of the NASD's By-Laws and Code of Procedure. Specifically, the proposal amends the By-Laws by codifying certain Association practices relating to the expulsion and suspension of members and associated persons. In addition, the proposal amends the By-Laws by prohibiting member participation in adjudicatory proceedings in which it would have a conflict of interest and would recognize the rulemaking authority of the Municipal Securities Rulemaking Board. The proposal also amends the Code of Procedure to accommodate those sections of the By-Laws that provide a member or associated person with a right to a hearing before the NASD imposes certain sanctions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21839, March 12, 1985) and by publication in the *Federal Register* (50 FR 11041, March 19, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

¹ 15 U.S.C. 78s(b)(1) (1984).

² 17 CFR 240.19(b)-4 (1984).

³ See Securities Exchange Act Release No. 21907, March 29, 1985, 50 FR 13440, April 4, 1985.

⁴ Under the NASD's current rules (and the exchange rules prior to the recent increase) limits for options on securities which underlie exchange traded options are either 2,500 or 4,000 contracts.

⁵ Access firms are firms that are not members of an exchange but who are granted access to the exchange floor, without having to go through a member firm, for a certain fee in order to conduct an options transaction.

⁶ Traditionally, the position and exercise limits for conventional options have been the same as those for the lowest tier of exchange-traded options.

above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-9770 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 17, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Capital Cities Communications, Inc.

Common Stock, \$1.00 Par Value, File No. 7-8393

Johnson Controls, Inc.

Common Stock, \$.50 Par Value, File No. 7-8394

TIE/Communications, Inc.

Common Stock, \$.05 Par Value, File No. 7-8395

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 8, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9771 Filed 4-22-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review Enhancement; Meeting

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Suspension of National Airspace Review Enhancement (NARE) Plan.

SUMMARY: On December 19, 1984, Revision 3 to the National Airspace Review Enhancement (NARE) was published in the Federal Register (49 FR 49402). Since that date, the program has proceeded on schedule, with only minor changes. This notice is to suspend the Plan and scheduled meetings included in the pending reestablishment of the National Airspace Review Advisory Enhancement Committee Charter. Task Group 4-3, MLS Procedures and Airspace, scheduled to begin its meeting on May 14 (50 FR 12888) is also suspended pending further notice.

EFFECTIVE DATE: April 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Burton L. Gifford, Manager, National Airspace Review Enhancement Staff, AMS-4, Room 639, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 755-5623.

SUPPLEMENTARY INFORMATION: The DOT/FAA Order 1110.92 dated February 12, 1982, established and constituted the charter for the National Airspace Review Advisory Committee (NARAC) under provisions of the Federal Advisory Committee Act, Pub. L. 92-463, Title 5, U.S. Code, Appendix 1. DOT/FAA Order 1110.92A dated March 20, 1984, that reestablished and constituted the continuation of the charter through April 13, 1985, has not been renewed. Consequently, the NARAC and its component committees are suspended upon the charter expiration date of April 13, 1985, pending reestablishment of the NAREAC under the requirements of the Federal Advisory Committee Act, Pub. L. 92-463. At this time, we envision no effect on the work associated with the NARE Implementation Plan and associated implementation studies planned or in progress covering recommendations cleared for processing prior to April 13, 1985.

Brooks C. Goldman,

Associate Administrator for Administration.

[FR Doc. 85-9677 Filed 4-22-85; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Essential Trade Routes; Intent To Redesignate Extension of Deadline for Comments

On March 8, 1985, Notice of the intent of the Maritime Administrator to consolidate the present essential trade routes and essential trade areas into eight essential trade areas was published in the Federal Register (50 FR 9532).

The deadline for submitting comments concerning this proposal is extended to 5:00 P.M. on May 15, 1985.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By order of the Maritime Administrator.

Dated: April 15, 1985.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 85-9515 Filed 4-22-85; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 17, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New

Form Number: IRS Form 8390

Type of Review: New

Title: Information Return for

Determination of Life Insurance Company Earnings Rate Under Section 809

OMB Number: 1545-0091

Form Number: IRS Form 1040X

Type of Review: Revision

Title: Amended U.S. Individual Income Tax Return

Clearance Officer: Garrick Shear (202)

566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Services

OMB Number: 1515-0072

Form Number: CF 3315

Type of Review: Extension

Title: Declaration for Fee Entry of Game Animals or Birds Killed by U.S. Residents

Clearance Officer: Vince Olive (202) 566-9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

James V. Nasche, Jr.,

Departmental Reports Management Office,

[FR Doc. 85-9682 Filed 4-22-85; 8:45 am]

BILLING CODE 4810-25-M

Office of the Comptroller of the Currency

[Docket No. 85-5]

Privacy Act of 1974; Proposed New System of Record

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of Proposed New System or Records Concerning the Chain Banking Organization System.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Office of the Comptroller of the Currency ("Office") gives notice of the establishment of a new system of records entitled The Chain Banking Organizations System ("System").

DATE: Comments must be received no later than 30 days after publication of this notice. If no comments are received, the system of records will become effective June 24, 1985.

ADDRESS: Comments should be sent to Docket No. 85-5, Communications Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, Attn: Lynne Carter, (202) 447-1800.

FOR FURTHER INFORMATION CONTACT: Larry Senter, National Bank Examiner, Commercial Examinations, (202) 447-1184 or Larry Mallinger, Senior Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Purpose of System

The Office is establishing the System to enhance its supervision of chain banks. The system will contain information useful in identifying chain banking relationships. This will facilitate internal and interagency coordination of bank examinations and related supervisory responsibilities. Moreover, the system will provide a base of assessing the consolidated condition of various chain banking groups. The System is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

Description of the System

The System will consist of word processing and microprocessing programs which perform editing, updating and reporting functions on two types of data: (1) Name of an individual (or group of individuals acting in concert) that owns or controls two or more banks or financial institutions (including at least one national bank); and (2) information concerning individual chain banks, such as; name and location, charter number, charter type, date of last examination, percentage of outstanding stock owned by controlling individual or group and, if applicable, name of intermediate holding entity and percentage of it held by controlling individual or group.

TREASURY/CC00.015

SYSTEM NAME:

Chain Banking Organizations System (Treasury CC/00.015).

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

1211 Avenue of the Americas, Suite 4250, New York, NY 10036.

Peachtree Cain Tower, Suite 2700, 229 Peachtree St., Atlanta, GA 30303.

Sears Tower, Suite 5750, 233 South Wacker Dr., Chicago, IL 60606.

2345 Grand Avenue, Suite 700, Kansas City, MO 64108.

1201 Elm St., Suite 3800, Dallas, TX 75270.

50 Fremont Street, Suite 3900, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who directly, indirectly, or in concert with others, own and/or control a chain banking organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Chain Banking Organizations System consists of word processing and microprocessing programs which perform editing, updating and reporting

functions on two types of data: (1) Name of an individual (or group of individuals acting in concert) that owns or controls a chain banking organization and (2) information concerning individual chain banks, such as; name, location, charter number, charter type, date of last examination, percentage of outstanding stock owned by controlling individual or group and, if applicable, name of intermediate holding entity and percentage of it held by controlling individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 481, 12 U.S.C. 1817(j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The System may be used:

(1) To disclose information about specific chain banking organizations to other financial institution supervisory authorities for: (a) Coordination of examining resources when the chain banking organization is composed of banks or financial institutions subject to multiple supervisory jurisdiction; (b) coordination of evaluations and analysis of the condition of the consolidated chain group; (c) coordination of supervisory, corrective or enforcement actions;

(2) To disclose information to the extent provided by law or regulation and as necessary to report any apparent violations of law to appropriate law enforcement agencies.

(3) To disclose pertinent information to appropriate Federal, State, or local agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law.

(4) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement

negotiations or in connection with criminal law proceedings.

(6) To provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in a computer data base and on computer floppy disks or hard copy printouts stored in file cabinets.

RETRIEVABILITY:

All retrievable records are indexed by district location, state, alphabetically by surname of the individual(s) and/or entity controlling the chain banking organization.

SAFEGUARDS:

Access to records in electronic storage systems is restricted by user identification procedures and passwords which limit access to authorized employees of the Office. Computer disks and hard copy printouts will be stored in locked file cabinets when the Office is vacant.

RETENTION AND DISPOSAL:

Records are generally maintained in electronic storage disks in an on-line capacity until needed. Certain records are archived in off-line storage. All records, including those in printout form, are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219. District Offices—The Deputy Comptroller for each District is responsible for assuring the accuracy and routine maintenance of that portion of the System applicable to the district.

NOTIFICATION PROCEDURE:

Individuals who wish to be notified if they are named in the system shall submit a signed, written request to the appropriate District Office (or to the System Manager at the address listed). The request must contain: (1) The requestor's name and address; (2) the name of the system of records; and (3) the name and location of the bank(s) which they control individually or in concert with others.

In order to avoid excessive delay and unneeded correspondence, individuals requesting notification should

simultaneously request access to records pertaining to them.

RECORD ACCESS PROCEDURES:

Portions of this system of records may be accessed under the Privacy Act for purposes of inspection by identified controlling individuals for the express purpose of verifying that their controlling relationships are accurately recorded.

CONTESTING RECORD PROCEDURE:

Individuals who wish to contest a record in the system must submit a signed written request to the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219.

The requests should contain: (1) The name and address of the individual contesting the record; (2) the name of the system of records; (3) the name and location of the chain bank(s) which they reportedly control individually or in concert with others; and (4) the specific information being contested and the reason for contesting (it is believed to be inaccurate, irrelevant, incomplete, etc.).

RECORD SOURCE CATEGORIES:

Information that identifies chain banking groups primarily is gathered from: (1) Examination reports and related materials; (2) regulatory filings; and (3) Change in Bank Control Notices filed pursuant to 12 U.S.C. 1817(j).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated April 12, 1985.

D. Edward Wilson, Jr.,

Deputy Assistant Secretary for Departmental Management.

[FR Doc. 85-9781 Filed 4-22-85; 8:45 am]

BILLING CODE 4810-33-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources.

The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private Organization", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Latin American Legislators and Political Leaders: Political Development Project: USIA is interested in supporting a series of exchange visits for legislators, party leaders, and senior political staff persons from Spanish-speaking countries of Latin America to participate in a two-week study tour dealing with one or more aspects of political development and which will serve to build mutually supportive networking among the participants in the program and between the participants and their parties and the U.S. political system. Each study tour group will represent parties affiliated with one of the political internationals (Social Democratic, Christian Democratic, Liberal, International Democratic Union). The programming for each group will be politically balanced and non-partisan. The particular political development issues to be treated in the program are subject to some variation depending on the background and expertise of the recipient organization. However, whatever the political development themes treated, the program should deal with the means of promoting internal democratic development through international linkages and effective means for promoting and maintaining such networks. Participants will be Spanish speakers. The program is scheduled to begin in early Fall 1985. Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming, and with organizations that have substantial potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing

programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 120 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the limited financial assistance available.

Office of Private Sector Programs,
Bureau of Educational and Cultural
Affairs, (ATTN: Initiative Programs),

United States Information Agency 301
4th Street SW., Washington, D.C.
20547

Dated: April 17, 1985.

Robert Francis Smith,
Director, Office of Private Sector Programs.
[FR Doc. 85-9688 Filed 4-22-85; 8:45 am]
BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 78

Tuesday, April 23, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Communications Commission..	1
National Council on the Handicapped..	2
National Transportation Safety Board..	3

1

FEDERAL COMMUNICATIONS COMMISSION

April 19, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, April 26, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Amendment of § 43.61 of the Commission's Rules to Update and Simplify the Required Traffic Data Reports Filed by International Telecommunications Carriers. Summary: The Commission will consider whether to adopt this Report and Order amending § 43.61 of the Commission's Rules governing the reporting of traffic data by international telecommunications carriers.

Common Carrier—2—Title: Memorandum Opinion and Order in CC Docket No. 81-893, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry). Summary: The Commission will consider petitions for reconsideration challenging the termination charge provisions of longterm CPE lease contracts transferred to AT&T-IS from the BOCs as a consequence of divestiture and detariffing.

Common Carrier—3—Title: American Telephone & Telegraph Company AT&T Communications Tariff F.C.C. Nos. 9, 10, and 11. (Transmittal Nos. 285, 318). Summary: The Commission will consider AT&T's proposed private line tariffs, scheduled to take effect April 12, 1985.

Common Carrier—4—Subject: Petition for Declaratory Ruling filed by Universal Payphone Corporation. Summary: The Commission will consider the petition of Universal Payphone Corporation that certain regulations concerning interconnection and use of customer owned coin-telephones are unlawful under Commission policy.

Common Carrier—5—Title: AT&T PRO America Optional Calling Plan. Summary:

The Commission will consider tariff revisions filed by AT&T to implement a new optional calling plan called PRO America.

Mass Media—1—Title: Nighttime Operations on Canadian, Mexican, and Bahamian AM Clear Channels. Summary: The Commission issued a Notice of Proposed Rule Making looking toward the authorization of additional nighttime operations on AM frequencies which had been designated as clear channels under existing international agreements. The Commission will consider a Report and Order resolving the issues raised in this proceeding.

Mass Media—2—Title: In the Matter of Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules. Summary: The Commission will consider petitions for reconsideration, filed by Black Citizens for a Fair Media and by Henry Geller and Donna Lampert, of the Commission's Report and Order in MM Docket No. 84-19, which repealed the regional concentration of control rule.

Mass Media—3—Title: License Renewal Application of Station KTTL (FM), Dodge City, Kansas, licensed to Mr. & Mrs. Charles Babbs, d/b/a Cattle Country Broadcasting. Summary: The Commission considers petitions to deny KTTL's renewal application filed by the Dodge City Citizens for Better Broadcasting and the National Black Media Coalition; informal objections to KTTL's renewal application filed by the Attorney General of the State of Kansas, Robert T. Stephan, on behalf of the State of Kansas, the Anti-Defamation League of B'nai B'rith, the Jewish Community Relations Bureau of Kansas City, Missouri, and the Jewish War Veterans of the U.S.A.; and timely-filed application from Community-Service Broadcasting, Inc., seeking a construction permit for a new FM broadcasting station in Dodge City, Kansas, which is mutually exclusive with the renewal application of KTTL.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-9865 Filed 4-19-85; 2:55 pm]

BILLING CODE 6712-01-M

2

NATIONAL COUNCIL ON THE HANDICAPPED TIME AND DATE:

8:30 a.m.—5:30 p.m.—April 29, 1985
9:00 a.m.—3:30 p.m.—April 30, 1985
8:30 a.m.—5:30 p.m.—May 1, 1985

PLACE: (Cathedral A Conference Room: Mon. & Tues., Japanese Pavilion: Wednesday), Cathedral Hill Hotel, 1101 Van Ness Avenue, San Francisco, California.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED:

General Business including: Approval of Minutes, Executive Director's Report, Legislative Briefing
Consumers' Forum: Access to Services, Employment, Disincentives, Independent Living
Research & Providers' Forum: Presentations

PLEASE NOTE: Any person requiring an interpreter or other special services, please contact NCH Staff no later than April 26, 1985.

CONTACT FOR MORE INFORMATION: Lex Frieden, Executive Director, NCH, (202) 453-3846.

Lex Frieden,

Executive Director.

[FR Doc. 85-9864 Filed 4-19-85; 2:53 pm]

BILLING CODE 6820-85-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

(NM-85-7)

TIME AND DATE: 9 a.m., Tuesday, April 30, 1985

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Derailment of New York City Transit Authority Subway Train in the Joralemon Street Tunnel, New York, New York, March 17, 1984.

2. Hazardous Materials Special Investigation Report: Derailment of Seaboard System Railroad Train Extra 8294 North and Release of Oleum During Wreckage-Clearing Operations, Clay, Kentucky, February 5, 1984.

3. Railroad Accident Report: Derailment of Seaboard System Railroad Freight Train

FERHL at Marshville, North Carolina, April 10, 1984.

4. *Railroad Accident Report: Head-on Collision of Burlington Northern Freight Trains Extra 6760 West and Extra 7907 East, near Motley, Minnesota, June 14, 1984.*

5. *Special Investigation Report: Railyard Safety—Hazardous Materials and Emergency Preparedness.*

CONTACT PERSON FOR MORE

INFORMATION: Sharon Flemming, (202) 382-6525.

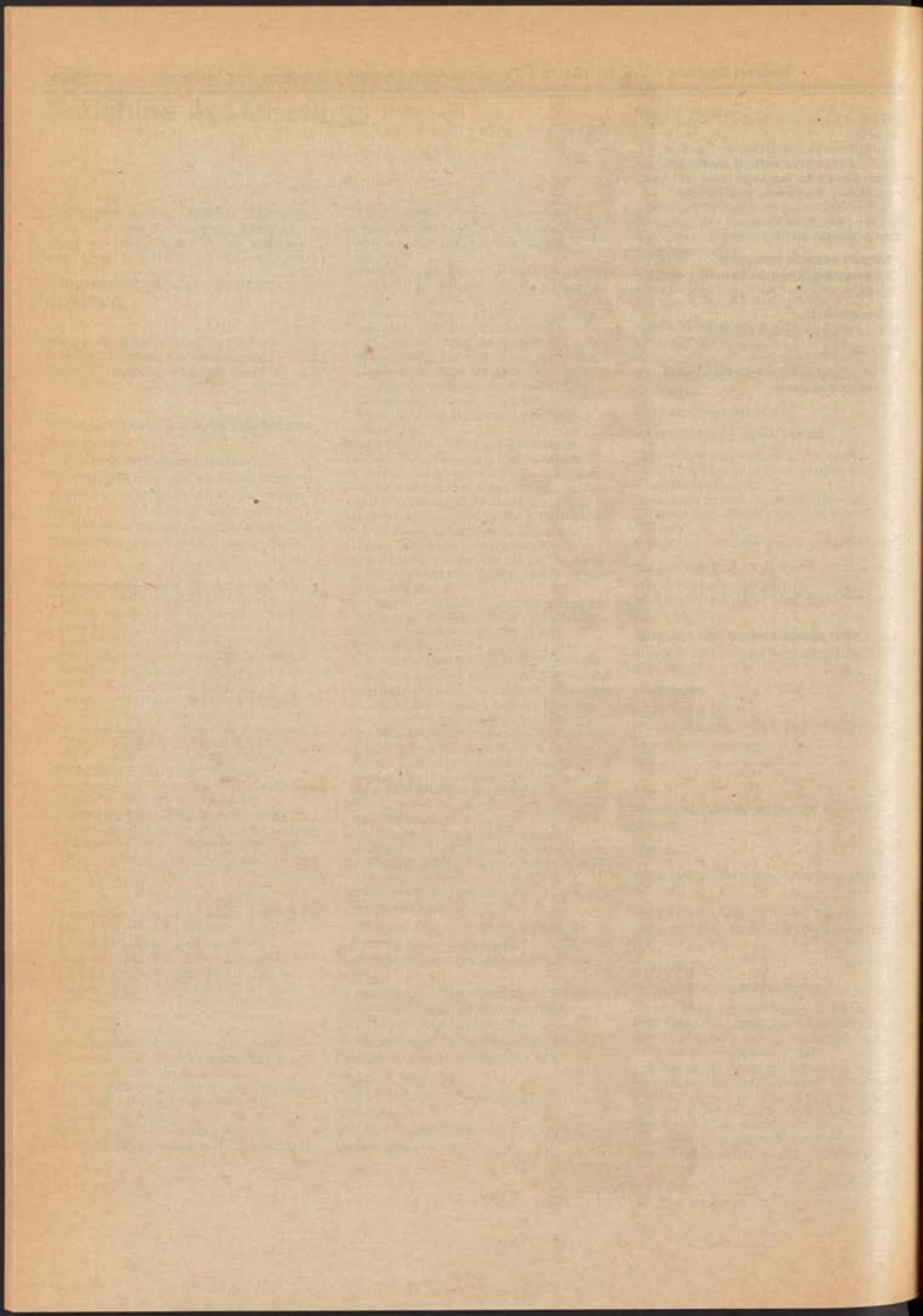
H. Ray Smith, Jr.,

Federal Register Liaison Officer.

April 19, 1985.

[FR Doc. 85-9872 Filed 4-19-85; 3:23 pm]

BILLING CODE 7533-01-M



Register

Vol. 50

April 23, 1985

Environmental Protection Agency

Tuesday
April 23, 1985

Part II

Environmental Protection Agency

40 CFR Part 265

**Hazardous Waste Management System;
Interim Status Standards for Owners and
Operators of Hazardous Waste
Treatment, Storage, and Disposal
Facilities; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 265**

[SWH-FRL-2784-5]

Hazardous Waste Management System; Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency is today amending the interim status regulations for hazardous waste surface impoundments, land treatment units, and landfills (40 CFR Part 265, Subparts K, M, and N, respectively), issued under authority of the Resource Conservation and Recovery Act, as amended (RCRA).

Most of today's modifications to the interim status standards were proposed on July 26, 1982. However, the amendment to the land treatment rules is in response to comments received on the May 19, 1980, interim final promulgation of those rules. Today's modifications provide consistency between certain of the interim status requirements for surface impoundments, land treatment units, and landfills and those contained in the permitting rules of 40 CFR Part 264, that were also published on July 26, 1982.

Today's modifications include the following:

- (1) A variance to the two-foot freeboard requirement for surface impoundments.
- (2) Final cover performance requirements for landfills.
- (3) An additional variance allowing placement of some ignitable or reactive wastes in surface impoundments.
- (4) More definitive requirements regarding placement of containers in landfills.
- (5) A clarification of the allowable treatment mechanisms at land treatment units.

EFFECTIVE DATE: These final regulations become effective on October 23, 1985, which is six months from the date of promulgation, as RCRA section 3010(b) requires.

ADDRESS: The official docket for this regulation is located in Room S212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

RCRA hotline at (800) 424-9346 (in Washington, D.C., call 382-3000) or Kent Anderson, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-4654.

SUPPLEMENTARY INFORMATION:**I. Authority**

These regulations are issued under the authority of sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

II. Background

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system intended to ensure that hazardous waste is safely treated, stored, or disposed. First, Subtitle C requires EPA to identify hazardous waste. Second, it creates a manifest system designed to track the movement of hazardous waste, and requires hazardous waste generators and transporters to employ appropriate management practices as well as procedures to ensure the effective operation of the manifest system. Third, owners and operators of treatment, storage, and disposal (TSD) facilities must comply with standards to protect human health and the environment that are established by EPA under section 3004 of RCRA. Ultimately, these standards for TSD facilities will be implemented through permits that are issued by authorized states or EPA to owners and operators of such facilities. However, until these permits are issued, existing facilities are controlled under the interim status regulations of 40 CFR Part 265. Under the interim status program, the owner or operator of a facility in existence on November 19, 1980, (or in existence on the effective date of statutory or regulatory changes under the Hazardous and Solid Waste Amendments of 1984 (HSWA) that render the facility subject to the requirement to have a permit under section 3005), who has complied with the notification requirements of section 3010 of RCRA, and applied for a permit (Part A application) in accordance with section 3005 of RCRA is treated as having been issued such a permit until the permit is issued or denied.

In regulations promulgated on July 26, 1982, (40 CFR Part 264, 47 FR 32274), EPA established permitting standards covering the treatment, storage, and disposal of hazardous wastes in surface impoundments, waste piles, land treatment units, and landfills. Owners

and operators of such facilities must meet these standards to receive a RCRA permit. Also included in the **Federal Register** on that date were a series of changes to the interim status requirements of Part 265, which were promulgated to ensure consistency with the new Part 264 standards. There were, however, a few additional Part 265 conforming changes that the Agency believed should first be proposed for public comment because, in most cases, the public had not had sufficient opportunity to comment on the appropriateness of applying them during the interim status period. The changes that were proposed on July 26, 1982, are today being made final.

In the promulgation of the Part 264 land treatment regulations on July 26, 1982, the Agency adopted an approach that had been suggested by commenters to the Part 265 interim status standards. These commenters had stated that the Agency position in Part 265 was not clear as to whether immobilization of hazardous waste constituents was an acceptable treatment mechanism and suggested that the Agency regard immobilization as acceptable. In the Part 264 land treatment requirements, the Agency clearly states that immobilization is an acceptable treatment mechanism. Today, the Agency is making a similar clarification to the interim status land treatment requirements.

III. Discussion of Today's Amendments**A. Surface Impoundments—General Operating Requirements**

Section 265.222 contains the rules designed to prevent overtopping of impoundment dikes. The interim status regulations promulgated on May 19, 1980, contain a performance requirement for the prevention of overtopping, as well as a requirement for maintenance of a minimum freeboard of two feet. The Agency received numerous comments as a result of the May 19, 1980, rulemaking claiming that the two-foot requirement is redundant in light of the performance requirement to prevent overtopping. Many claimed that the two-foot minimum is, in some cases, either underprotective or overprotective.

EPA generally agrees with these commenters and, in the Part 264 regulations, the Agency requires only that overtopping be prevented. As with most Part 264 requirements, this is implemented through the permitting process, when the applicant assesses the potential causes of overtopping (e.g., rainfall, run-on, equipment malfunctions and human error) and develops design

features and operating practices to prevent overtopping. During interim status, in the absence of Agency review provided by the permitting process, EPA is concerned that a general performance requirement, such as "prevent overtopping", may not be adequately self-implementing or readily enforced.

Therefore, the Agency is maintaining the two-foot minimum freeboard requirement in the interim status rules, but is allowing a variance if a qualified engineer certifies that alternate design features or operating procedures will prevent overtopping. Examples of alternate design features or operating procedures that may support the use of a freeboard of less than two feet include: (1) An impoundment cover to control rainfall and wind and wave action or (2) a combination of features or factors such as controls to reduce wind and wave action, level controls or emergency overflow structures, and local historic weather conditions. We believe that a qualified engineer can review a facility's characteristics that may contribute to the potential for impoundment overtopping and the impoundment's design and operating features to prevent such overtopping and adequately conclude whether overtopping is a realistic possibility. The owner or operator would also be required to maintain the certification and the basis for it at the facility for review during enforcement inspections. The Agency believes this approach to be self-implementable and to provide a degree of protection equivalent to that of the two-foot freeboard minimum. Only one comment was received on the July 26, 1982, proposal of this part 265 amendment. That comment supported the two-foot freeboard variance provision.

B. Landfill Closure and Post-Closure Care

The part 264 rules issued on July 26, 1982, for landfill closure and post-closure care are in many ways quite similar to the interim status requirements. The Part 264 rules are, however, more explicit and somewhat more environmentally protective. The Agency believes the more explicit Part 264 rules for landfills can readily be implemented during interim status as well since the existing review process for interim status closure and post-closure care plans will provide an opportunity for the Agency to review the specifics of the plans for compliance. Any problems with misinterpretation by the owner or operator would, therefore, be identified and rectified. In fact, the process during interim status is similar to the review process for closure and

post-closure care plans conducted during the permitting process. Therefore, the Agency is adopting, as Part 265 interim status requirements, the Part 264 closure and post-closure care requirements for landfills (§ 264.310), except for the § 264.310 leachate management requirements because existing units at interim status landfills are not required to have leachate collection and removal systems. (The HSWA require leachate collection systems for new units and lateral expansions and replacements of existing units at interim status facilities. The issue of post-closure operation and maintenance of leachate collection systems at these units will be addressed in rules under section 3004(o)(5)(A) of RCRA, as amended by HSWA.)

The new interim status requirements promulgated today have more explicit and stringent requirements governing the final cover for landfills than do the current interim status rules. The cover must now "minimize" infiltration instead of simply "controlling" it. In order to prevent the "bathtub" effect, it must be at least as impermeable as any bottom liner or any underlying subsoils that could potentially cause liquids to accumulate within the landfill. Therefore, if the bottom liner or underlying subsoil is highly impermeable, the cover will also have to be highly impervious. It must also accommodate settling and subsidence. The rationale for these requirements remains the same as that discussed in detail in the preamble to the Part 264 requirements promulgated on July 26, 1982 (47 FR 32320-32321).

The new interim status post-closure care requirements for landfills also contain some differences from the current rules. The new provisions require that erosion of the cover from precipitation be minimized. This requirement is as appropriate for interim status as for permitted units. The requirement that access be restricted to landfills during post-closure care has been dropped because it is redundant to § 265.117(b).

On July 26, 1982, changes to the surface impoundment closure and post-closure care requirements (§ 265.228) were also proposed. The proposed changes are related to clean-up policies being refined under the Agency's Superfund program. The Agency is currently examining the relevant issue in the context of both programs. Pending further analysis, we are not at this time making final the changes to § 265.228 that were proposed on July 26, 1982.

C. Surface Impoundments—Ignitable or Reactive Waste

The existing interim status limitations on placing ignitable or reactive waste in surface impoundments allow the practice only if the waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste, unless the surface impoundment is used solely for emergencies. The Part 264 requirements additionally allow the use of impoundments for ignitable or reactive waste if the waste is protected from conditions that could cause it to ignite or react. EPA does not expect this variance to be used much, but recognizes that protection from certain types of reactions may be practical. Design or operating practices that protect against ignition or reaction may include warning signs, fences, separation of impoundments, or covers. Since the management methods providing protection can be reviewed during permitting, we believe that the new variance provides additional flexibility to the owner or operator without sacrificing human health or environmental protection.

Adoption of the same variance during interim status, however, presents the same enforcement and self-implementation problems as adoption of the freeboard variance discussed in section A. The Agency is again addressing these difficulties by requiring that the owner or operator obtain certification from a qualified chemist or engineer that the design features of the facility or the operating practices employed will prevent ignition or reaction. EPA expects that a qualified engineer or chemist can evaluate the operation and adequately determine that it is safe. Enforcement of the rule can adequately be carried out by comparing the basis for the certification kept at the facility against actual practice.

Only one comment was received on this Part 265 amendment when it was proposed on July 26, 1982. That comment was in support of the greater flexibility offered by the variance provisions.

D. Landfills—Special Requirements for Containers

The existing interim status requirements mandate that empty containers be crushed flat prior to placement in a landfill. The purpose of this requirement is to minimize differential subsidence over time due to

the collapse of empty containers. Such subsidence poses a serious threat to the continuity and proper functioning of the final cover.

Commenters on this provision when it was promulgated on May 19, 1980, made three basic suggestions:

- (1) Small containers should be exempted.
- (2) EPA should provide guidance on when a container is empty or full for purposes of this rule, and
- (3) EPA should provide guidance on how much crushing and shredding is necessary to comply.

The Agency agreed with all of these suggestions and, in § 264.315 (promulgated on July 26, 1982), addressed these comments (1) by exempting small containers such as ampules, and (2) by requiring that all containers be at least 90% full or crushed prior to being placed in a landfill. Similarly, we are today promulgating these requirements in § 265.315. The rationale for these requirements is discussed in the preamble to the July 26, 1982, issuance (47 FR 32331-32332).

We are, however, not yet able to provide more specific guidance in response to comment (3) regarding how much shredding or crushing is necessary to comply with the rule. In the *Federal Register* on July 26, 1982, we stated that we would prefer to set a performance limit on the required effectiveness of volume reduction and had considered imposing a requirement limiting maximum remaining void space after crushing to 10 percent of the precrushed volume. However, we lacked data at that time on the practicality of such a limit and requested comments on the level of performance that may practically be required.

Two sets of comments were received on the requirements for disposal of containers in landfills. One commenter stated that only 90 percent of the containers placed in a landfill should have to comply with the 90 percent full provision. We do not agree with this comment because the remaining 10 percent of totally empty containers would still cause damaging differential settlement. We also disagree with this commenter's contention that landfills located over substantial clay deposits are not sensitive to void space. Voids in a landfill, regardless of the underlying structure, can result in cover subsidence. The underlying soil structure is not relevant to the potential for void spaces in the waste to cause damage to the cover.

A second commenter addressed the issue of setting a performance limit on the volume reduction of empty

containers. The commenter contended that: (1) Requiring that containers be crushed to the "maximum practical extent" does not provide adequate guidance to landfill owners and operators, and that (2) the phrase, "maximum practical extent," suggests that factors other than absolute technological compatibility, such as cost, equipment availability, container design, and composition, can be considered in determining whether a container is crushed to the maximum practical extent. While EPA would prefer to make this requirement more specific, we do not yet have adequate information to structure a more explicit performance standard.

E. Land Treatment—Interpretation of "Treatment"

The current interim status requirements at § 265.272(a) prohibit the land treatment of hazardous waste "unless the waste can be made less hazardous or nonhazardous by biological degradation or chemical reactions occurring in or on the soil." The Agency has received some comments questioning whether immobilization of heavy metals is considered an acceptable "treatment" mechanism within the context of this provision. Several commenters expressed a concern that an overly strict interpretation of § 265.272(a) could result in the exclusion of certain wastes, such as oily wastes, from land treatment facilities, because they contain inorganic hazardous waste constituents. The intent of this amendment to § 265.272(a) is to clarify EPA's interpretation of acceptable "treatment" as it applies to land treatment under the interim status standards.

As is reflected in the Part 264 regulations (§§ 264.271(a) and 264.273(a)), the Agency believes that hazardous waste may be rendered less hazardous or nonhazardous (i.e., treated) in soils through the chemical, biological, and physical processes of degradation, transformation, and immobilization. These processes, alone or in combination, reduce the hazardousness of a waste by altering the chemical or physical state of the hazardous constituents in the soil matrix, making them unavailable or less available for environmental contamination. For example, organic constituents may be completely degraded or transformed to nonhazardous constituents, while inorganic constituents may be effectively immobilized through chemical reactions or physical attenuation processes. The Agency is today modifying the language in

§ 265.272(a) to clarify that degradation, transformation, and immobilization are all considered effective treatment processes. This approach is consistent with that taken in the Part 264 regulations.

Degradation, transformation, and immobilization processes all play a role in achieving effective treatment of hazardous constituents at land treatment units. As used in the regulations, degradation refers to the chemical, biological, or physical decomposition of organic waste constituents to compounds of lower molecular weight, whereas transformation pertains to reactions in which waste constituents are chemically changed to different compounds of higher molecular weight. Immobilization includes physical and chemical reactions, such as soil sorption, precipitation, and cation exchange, that result in the attenuation of waste constituents in the soil matrix. At land treatment units, degradation and transformation are considered the primary treatment mechanisms for organic constituents, while immobilization is reserved as the primary mode of treatment only for the smaller inorganic components of the waste.

As discussed in the preamble to the July 26, 1982, regulations (47 FR 32325), the Agency does not consider dilution to be an acceptable treatment process. Dilution does not provide chemical, biological, or physical "treatment" of hazardous constituents. Rather, dilution allows wide dispersal of hazardous constituents in the soil matrix. Since they remain untreated, such constituents may eventually migrate and concentrate to unacceptable levels in ground water or surface water.

While the general philosophy of "treatment" (i.e., degradation, transformation, and immobilization) under the Part 265 and Part 264 regulations is identical, there remain two significant differences in the scope and implementation of the treatment standard. First, under Part 265, the treatment standard applies only to the hazardous waste constituents in the hazardous wastes being land treated. These include constituents that either cause the waste to exhibit the characteristic of EP toxicity (see Part 261, Subpart C, Table 1), or cause the waste to be listed as hazardous waste (see Part 261, Subpart D, Appendix VII). Under the Part 264 regulations, however, the Agency has expanded this requirement to include all hazardous constituents (see Part 261, Subpart D, Appendix VIII) present in the waste.

This difference reflects the more comprehensive regulatory approach taken under the Part 264 regulations.

Second, the determination that the treatment objective is being met under Part 265 is achieved through the use of unsaturated-zone and ground-water monitoring data from the full-scale operational land treatment unit. Continued land treatment without successful treatment determinations via monitoring data is a violation of the interim status standards. Under Part 264, however, all land treatment units (existing and new) are required to demonstrate prior to full-scale operation under Part 264 that all hazardous constituents in the waste can be successfully treated in the proposed unit. This demonstration information is used by the permit writer to define in the Part 264 permit specific design and operating conditions to assure successful treatment when the facility is fully operational.

IV. Effective Date

Pursuant to section 3010(b) of RCRA, today's amendments will be effective six months after promulgation.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, and transportation of hazardous waste and the operation of facilities that treat, store, or dispose of hazardous waste. Interim authorization is granted to States with programs that are "substantially equivalent" to the Federal program (Section 3006(c)). Final authorization is granted to States with programs that are equivalent to the Federal program, consistent with the Federal program and other State programs, and that provide for adequate enforcement (Section 3006(b)).

Under RCRA, prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), once EPA authorized a State program, EPA suspended administration and enforcement within the State of those parts of the Federal program for which the State was authorized.

However, under section 3006(g) of HSWA, any requirement pertaining to hazardous waste promulgated pursuant to HSWA is effective in authorized States at the same time it is effective in

other States. EPA will administer and enforce the requirements in each State until the State is authorized with respect to such requirement. Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Today's modifications to Part 265 are not applicable in authorized States since the requirements are not being imposed pursuant to HSWA; the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements.

B. Effect on State Authorizations

As stated above, these final rules will not apply immediately in authorized States. States that have final authorization must revise their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must revise its program to include equivalent standards within the time period discussed above. The process and schedule for revision of the State programs is described in amendments to 40 CFR 271.21 published on May 22, 1984. (See 49 FR 21678.)

It should be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under section 3009 of RCRA, States cannot be prohibited from imposing standards that are more stringent than those in the Federal program. Some of the standards promulgated today are considered to be less stringent than the existing Federal requirements. Those less stringent provisions appear in §§ 265.222, 265.229, and 265.272(a). Authorized States are not required to revise their programs to adopt requirements equivalent to those listed above.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact

Analysis. As stated in the proposed rule on July 26, 1982, the Agency does not believe these conforming changes will result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in domestic or export markets. In addition, the Part 265 conforming changes do not impose any requirements beyond those required for permitting facilities under Part 264. The effect of the Part 265 conforming changes is only to impose these requirements somewhat sooner, thus the impact is not significant. Therefore, EPA does not expect today's rule to be subject to the major rule provisions of Executive Order 12291.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), EPA must prepare a regulatory flexibility analysis for all regulations that may have a significant impact on a substantial number of small entities. The Agency conducted such an analysis on the Part 264 land disposal regulations and published a summary of the results in the *Federal Register*, Vol. 48, No. 15 on January 21, 1983. The additional burdens imposed by this regulation are not considered significant. In addition they do not impose any requirements beyond those required for permitting facilities under Part 264.

VIII. Paperwork Reduction Act

The certification requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050-0007.

IX. Lists of Subjects in 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: April 15, 1985.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Part 265, Subparts K, M, and

N. of Title 40 of the Code of Federal Regulations are amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

2. In 40 CFR Part 265, Subpart K, §§ 265.222 and 265.229 are revised to read as follows:

§ 265.222 General operating requirements.

(a) A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overflowing, wave action, or a storm. Except as provided in paragraph (b) of this section, there must be at least 60 centimeters (two feet) of freeboard.

(b) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility.

(Approved by the Office of Management and Budget under the control number 2050-0007)

§ 265.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter; and

(2) Section 265.17(b) is complied with; or

(b)(1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(3) The certification and the basis for it are maintained at the facility; or

(c) The surface impoundment is used solely for emergencies.

(Approved by the Office of Management and Budget under the control number 2050-0007)

3. In 40 CFR Part 265, Subpart M, § 265.272 is amended by revising paragraph (a) to read as follows:

§ 265.272 General operating requirements.

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

* * *

4. In 40 CFR Part 265, Subpart M, §§ 265.310 and 265.315 are revised to read as follows:

§ 265.310 Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in §§ 265.117-265.120 including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Subpart F of this part;

(3) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(4) Protect and maintain surveyed benchmarks used in complying with § 265.309.

§ 265.315 Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

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Federal Register

Vol. 50, No. 78

Tuesday, April 23, 1985

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	523-5266

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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

12761-12986	1
12987-13160	2
13161-13308	3
13309-13536	4
13537-13750	5
13751-13962	8
13963-14086	9
14087-14206	10
14207-14362	11
14363-14690	12
14691-14918	15
14919-15092	16
15093-15402	17
15403-15534	18
15535-15728	19
15729-15856	22
15857-16048	23

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR	319	14691
Proposed Rules:	353	14691
Ch. III	434	12764
	435	12764
3 CFR	436	12765
Executive Orders:	905	13761
April 17, 1926	908	13309
(Revoked in part by	910	13545, 14369, 15537
PLO 6599)	911	15097
10000 (Amended	989	14209
by EO 12510)	1126	12765
12070 (Superseded	1407	12766
by EO 12510)	1488	13966
12509	1491	13967
12510	1872	12989, 15098
	1942	12767, 12989, 13004, 15098
Proclamations:		
5164 (Amended by	1944	12989, 15098
Proc. 5313)	1951	12989, 15098
5312	1955	12989, 15098
5313	1962	12989, 15098
5314	3015	14088
5315		
5316		
5317		
5318		
5319		
5320		
5321		
5322		
Administrative Orders:		
Presidential Determinations		
No. 85-9 of		
March 29, 1985	14363	
No. 85-10 of		
April 2, 1985	14207	
4 CFR		
83	13161	
5 CFR		
307	13172	
316	13172	
352	13963	
930	15407	
1201	13173, 15409	
Proposed Rules:		
293	15158	
870	15428	
871	15428	
872	15428	
873	15428	
7 CFR		
1a	13759	
29	15537	
52	15861	
54	14365	
272	13759	
273	13759	
301	12764, 13178, 13537, 13965, 14087, 15532	
	319	14691
	353	14691
	434	12764
	435	12764
	436	12765
	905	13761
	908	13309
	910	13545, 14369, 15537
	911	15097
	989	14209
	1126	12765
	1407	12766
	1488	13966
	1491	13967
	1872	12989, 15098
	1942	12767, 12989, 13004, 15098
	1944	12989, 15098
	1951	12989, 15098
	1955	12989, 15098
	1962	12989, 15098
	3015	14088
	Proposed Rules:	
	Ch. X	13976
	52	13042, 15160, 15568
	800	15569
	915	15430
	925	13609
	929	12812
	944	13609, 15430
	1002	14110
	1004	12813, 14110
	1007	12817
	1011	12817
	1032	13976, 15432
	1048	12817
	1093	12817
	1097	12817
	1098	12817
	1102	12817
	1106	13977
	1108	12817
	1150	14390
	3015	15433
	8 CFR	
	103	13546, 15098
	238	14369
	9 CFR	
	78	13546, 15410
	92	13309, 14919
	327	14370
	Proposed Rules:	
	51	14246
	71	15166
	78	15166
	85	14931
	92	13042
	318	14711, 15435
	381	15435

10 CFR					
2	13006, 15865				
30	14692				
40	14692				
70	14692				
605	14856				
1017	15818				
Proposed Rules:					
19	13797, 15902				
20	13797, 15902				
21	13797, 15902				
30	13797, 15902				
35	15752				
39	13797, 15902				
40	13797, 15902				
50	13810				
51	13797, 15902				
70	13797, 15902				
71	13797, 15902				
140	13978				
150	13797, 15902				
430	12966, 13042				
11 CFR					
Proposed Rules:					
110	15169				
12 CFR					
5	13762				
204	13010				
205	13180				
208	13010				
217	13010				
226	13181				
325	13185				
523	13968				
612	15865				
Proposed Rules:					
Ch. III	14247				
352	15453				
611	14110				
13 CFR					
116	14210				
120	13309				
121	13310, 15411				
122	13309				
133	12772				
Proposed Rules:					
120	14248				
14 CFR					
39	12774, 12775, 13013-13015, 13310, 13548-13554, 13766, 14088, 14370, 14919, 15098, 15099, 15538, 15539, 15865, 15866				
61	15376				
63	15376				
65	15376, 15698				
71	12776, 13186, 13767-13769, 14089-14092, 14694, 14695, 15540, 15541				
73	15541, 15542				
75	14092				
91	15376				
95	12777				
97	14371				
121	14373				
1214	13186				
1252	13311				
Proposed Rules:					
Ch. I	15577				
21	13810				
25	13226, 15038				
39	13611, 13810-13815, 14390, 14391, 14716, 14717				
61	15381				
63	15381				
71	12818, 13227, 13817-13819, 14939, 15577-15583, 15902, 15903				
73	14717, 15903				
91	15381, 15528				
121	15038, 15528				
125	15528				
1261	13228				
135	15528				
15 CFR					
30	13016				
369	13187				
370	15867				
373	14373				
399	13770, 15867				
904	12781				
922	12781				
970	12781				
16 CFR					
13	13189, 13968, 13969, 15412, 15413				
300	15100				
303	15100				
305	12786				
1030	13555				
Proposed Rules:					
13	13240				
305	13820				
306	13048				
460	13246				
17 CFR					
4	15868				
140	15413, 15868				
Proposed Rules:					
33	14718				
240	13388, 13612, 14111, 15904, 15912				
249	15912				
18 CFR					
2	14374				
154	14374				
157	14374				
201	14374				
270	14374, 15729				
271	14374, 14378, 15729				
272	15729				
273	15729				
375	15730				
385	15731				
Proposed Rules:					
225	15176				
271	14249				
277	15176				
410	13249				
19 CFR					
4	15414				
10	14093				
19	15884				
101	13190				
178	13771				
Proposed Rules:					
6	12819				
175	14250				
20 CFR					
416	14211				
Proposed Rules:					
617	14720				
635	14720				
21 CFR					
5	14093, 14094, 14211				
71	14212				
81	13017, 13018				
105	13555				
107	13555				
170	14212				
171	14212				
176	14696				
177	14095				
178	13556				
179	15415, 15417				
180	14212				
182	13557				
184	13557				
193	14096, 14097				
201	14212				
310	14212				
312	14212, 15543				
314	14212				
330	14212				
430	14212				
431	14212				
433	14212				
444	15107				
448	15107				
510	14212				
511	14212				
514	14212				
520	13560, 13561				
558	13561-13563, 15885				
561	14096, 14097				
570	14212				
571	14212				
601	14212				
812	14212				
1003	14212				
1010	13563, 13564, 14212				
1020	15543				
1030	13565				
Proposed Rules:					
101	13306, 15177, 15458				
182	12821				
184	12821				
186	12821				
211	13388				
310	13388				
330	15810				
331	15810				
332	15810				
357	15810				
22 CFR					
2	14379				
120	12787				
121	12787				
124	12787				
125	12787				
126	12787				
127	12787				
128	12787				
Proposed Rules:					
208	15584				
23 CFR					
625	14913				
Proposed Rules:					
635	14251, 14722				
650	14251				
658	12825, 13821				
24 CFR					
203	14379				
204	14379				
205	14921				
232	12788				
235	12788				
570	12789				
595	12789				
882	15733				
888	14922				
Proposed Rules:					
207	15754				
213	15754				
25 CFR					
700	14379				
26 CFR					
1	13019				
5c	13019				
11	13019				
301	13019, 14696, 15417				
601	13020				
602	13020, 13962, 14696				
Proposed Rules:					
1	13821, 14256, 14392, 15930				
31	14392				
54	14392				
27 CFR					
47	14380				
178	14380				
250	15886				
275	15886				
Proposed Rules:					
9	15588				
28 CFR					
2	12789				
29 CFR					
Proposed Rules:					
1910	14698, 15756				
1926	15756				
1952	14924				
2619	14700				
2644	12790				
2674	12791				
2677	12796				
Proposed Rules:					
19	13049				
1910	12827, 15179				
1928	15086				
30 CFR					
Ch. VII	13566				
914	13566				
916	14212				
917	13567				
938	13315				
948	15889				
Proposed Rules:					
Ch. II	15590				
104	13617				
216	12828				
700	13250				
761	13250				
773	13724				
915	13388				
935	12833, 15759				
943	14256				
944	12834				
31 CFR					
Proposed Rules:					
10	15937				

32 CFR	266.....14216	3500.....14512	2.....13255, 13394
78.....14383	302.....13456	3510.....14512	5.....13394
90.....15734	Proposed Rules:	3520.....14512	18.....13394
544.....13771	Ch. I.....15462	3530.....14512	21.....13394
706.....14384, 14385	50.....13130	3540.....14512	22.....13255, 13394
721.....15891	51.....13130	3550.....14512	25.....13255
728.....15111	52.....13130, 13250, 13390, 14396, 15190, 15761, 15943	3560.....14512	67.....14729
Proposed Rules:	53.....13130	3570.....14512	73.....13050, 13394, 13402, 13838, 13994, 14265-14271, 14946-14954, 15591
62b.....13985	58.....13130	3580.....14512	76.....15592
33 CFR	60.....14941	44 CFR	83.....13394
45.....13317	61.....14941	Proposed Rules:	90.....13394, 13997
62.....14213	62.....15186	59.....14904	95.....13394
100.....12799, 14214, 14215, 14701, 15418, 15741	65.....14259, 14396	60.....14904	97.....15195, 15196
110.....15742	81.....12840, 13130, 15187, 15463, 15762, 15763	61.....14904	99.....13394
117.....13318, 14702, 15742	152.....14115	64.....14904, 14926, 14928	
146.....14215	158.....14115	66.....14904	48 CFR
150.....14215	166.....13251, 13944	67.....15191	Ch. 4.....14196
157.....12800	180.....13251, 15188, 15189	70.....14904	Ch. 5.....14243
165.....14701, 14703, 15419, 15420, 15743, 15744	220.....13986	72.....14904	Ch. 12.....14798
Proposed Rules:	227.....13986	75.....14904	Ch. 19.....13200
100.....14257, 14722, 15459, 15760	228.....13986, 14336	45 CFR	201.....13353
110.....12835, 12837, 14723 14940, 15460	234.....13986	1321.....12942	205.....13353
117.....13389, 13835, 14258, 15461	250.....14076	1328.....12942	206.....13353
165.....12838	264.....13253	1340.....14878	207.....13353
34 CFR	271.....14945	1611.....13331	208.....13353
682.....13916	300.....14115	Proposed Rules:	210.....13353
36 CFR	302.....13514	1301.....13253	213.....13353
Proposed Rules:	704.....15943	46 CFR	214.....13353
7.....15056	712.....13391	76.....15750	215.....13353
Ch. XII.....15722	761.....13393	95.....15750	216.....13353
37 CFR	41 CFR	153.....15895	217.....13353
Proposed Rules:	Ch. 201.....13023	154.....15895	219.....13353
Ch. IV.....13524	13319, 14220, 14386	580.....14704	220.....13353
201.....14725	101-11.....15722	Proposed Rules:	225.....13353
38 CFR	101-21.....14242	Ch. IV.....14122	235.....13353
17.....14704	101-13.....15722	154.....15591	236.....13353
36.....12800, 13020, 13191, 13970	105-60.....15722	175.....13837	237.....13353
Proposed Rules:	105-61.....15722	176.....13837	245.....13353
1.....14393, 15848	105-65.....15722	177.....13837	247.....13353
3.....15848	Proposed Rules:	180.....13837	250.....13353
19.....15184	101-38.....14260	181.....13837	252.....13353
21.....13836	101-39.....14260	182.....13837	270.....13353
39 CFR	101-40.....14260	183.....13837	501.....14243
111.....13569, 14216	101-41.....14261	184.....13837	507.....14243
255.....14098	42 CFR	185.....13837	1501.....14356
Proposed Rules:	400.....15312, 15347, 15427	186.....13837	1503.....14356
111.....12839, 13050	405.....15312, 15335, 15427	187.....13837	1505.....14356
40 CFR	412.....15312, 15427	188.....13837	1506.....14356, 15425
52.....14925, 15144, 15421- 15423, 15745, 15892	420.....15335	189.....13837	1513.....14356
60.....12801-12803, 13021, 15424, 15425, 15544, 15545, 15893	431.....15312, 15427	298.....13050	1514.....14356
61.....12802, 12803, 13021, 13022, 15386, 15425, 15545	433.....15312, 15427	516.....13617	1515.....14356, 15425
65.....13970	435.....13196	560.....13617	1517.....14356
81.....15746, 15748	436.....13196	572.....13617, 14264	1527.....14356
117.....13456	456.....15312, 15427	47 CFR	1533.....14356
180.....13194, 13195, 14104- 14106	460.....15312, 15427	Ch. 1.....15547	1536.....14356
260.....14216	462.....15312, 15427	0.....14386	1552.....14356, 15425
261.....14216	466.....15312, 15427	2.....14386	1803.....13365
265.....16044	473.....15364	22.....13332, 14386	1804.....13365
	474.....15335	64.....13573	1808.....13365
	476.....15347	67.....15558	1812.....13365
	489.....15335	69.....13023	1815.....13365
Proposed Rules:	Proposed Rules:	73.....13031-13038, 13333- 13337, 13791, 13971, 13972, 15146, 15558	1819.....13365
435.....14397	435.....14397	76.....13972	1822.....13365
43 CFR	43 CFR	81.....13974	1827.....13365
Public Land Orders:	2650.....15546	90.....13596, 14389, 15148	1832.....13365
6599.....12804	6599.....12804	94.....13338	1844.....13365
6600.....15145	6600.....15145	95.....15563	1845.....13365
Proposed Rules:	Proposed Rules:	97.....13792	1847.....13365
3200.....14945	Ch. I.....13623, 13986, 13991, 14727, 15191	Proposed Rules:	1851.....13365
	1.....13394	Ch. I.....13623, 13986, 13991, 14727, 15191	1852.....13365
		1.....13394	Proposed Rules:
			Ch. 5.....14122
			52.....13256
			515.....15463

522.....15463
552.....15943

49 CFR

25.....12804
27.....13039
173.....13381
192.....13224
195.....15895
215.....13381
571.....15154
1130.....15900
1180.....15751

Proposed Rules:

215.....15593
393.....14630, 15198
571.....13402, 14580, 14589,
14602, 14626
572.....14602
575.....14400
584.....14632
585.....14589
1039.....14122
1132.....13051
1152.....13256, 14401
1175.....13841
1207.....13053
1249.....13053

50 CFR

10.....13708
17.....15547
216.....12781
217.....12806
219.....12781
222.....12806
246.....12781
258.....15901
285.....12781
296.....13796
301.....13382
611.....14107, 15425
621.....12781
652.....14930
671.....13040
672.....12809, 15426

Proposed Rules:

13.....15396
17.....13054, 14123, 15396,
15764
23.....14402
285.....13256
611.....15464
646.....13639
683.....13405

of Pigs invasion to liberate
Cuba from Communist tyranny.
(Apr. 19, 1985; 99 Stat. 51)
Price: \$1.00.

S.J. Res. 17/Pub. L. 99-26

To authorize and request the
President to issue a
proclamation designating April
21 through April 28, 1985, as
"Jewish Heritage Week". (Apr.
19, 1985; 99 Stat. 52) Price:
\$1.00

S.J. Res. 109/Pub. L. 99-27

To designate the week of
April 14, 1985, as "Crime
Victims Week". (Apr. 19,
1985; 99 Stat. 53) Price:
\$1.00

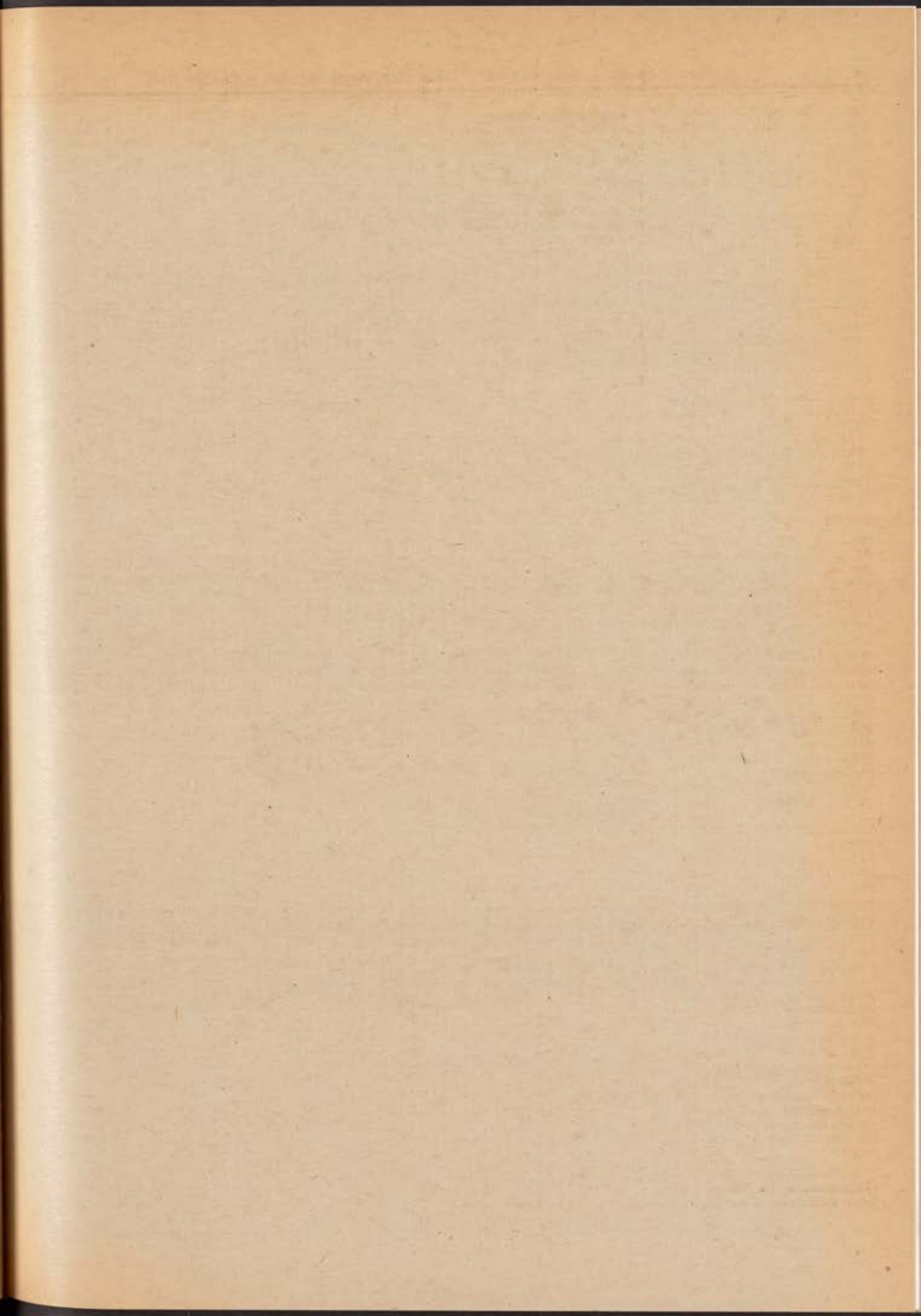
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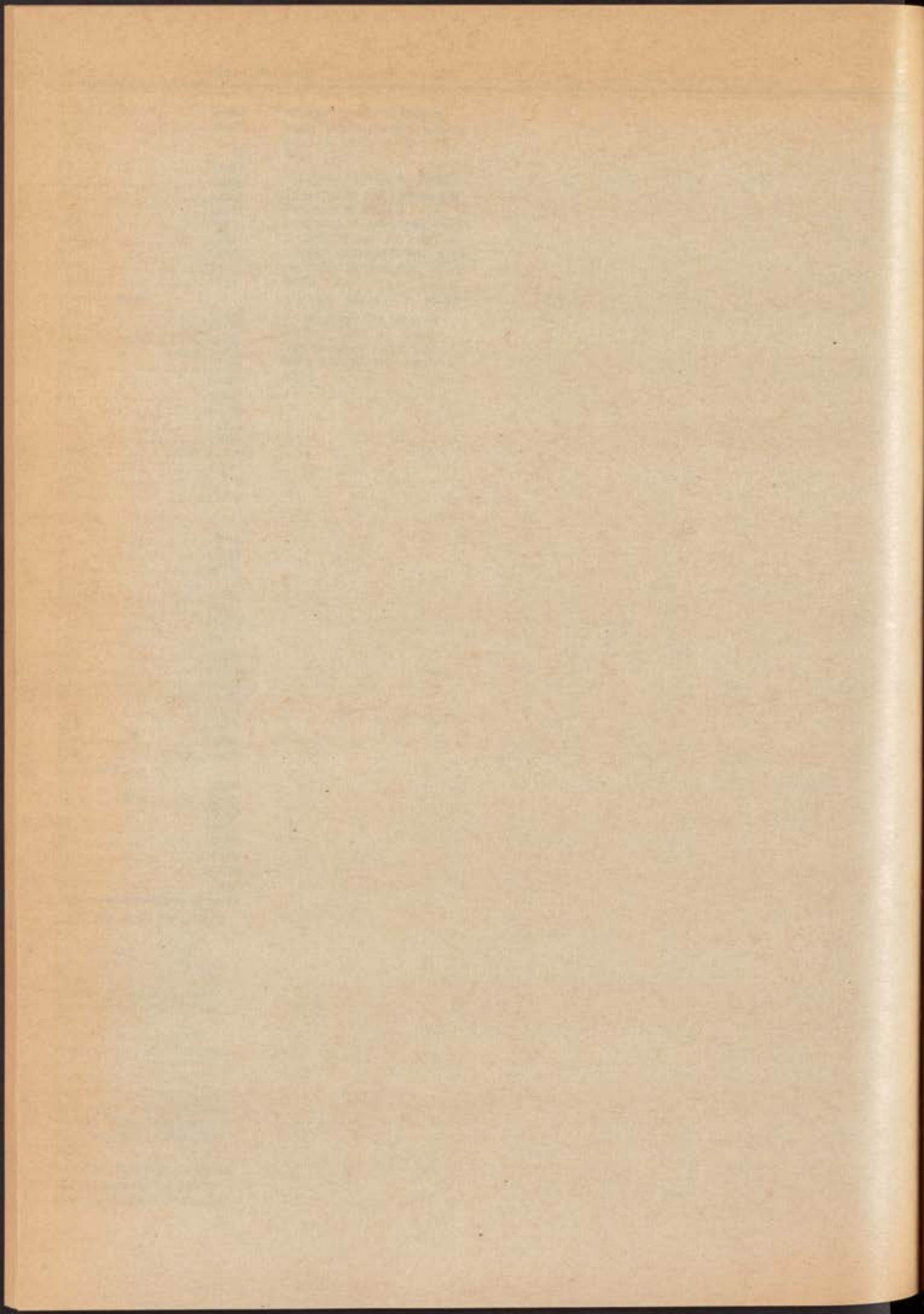
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H.J. Res. 235/Pub. L. 99-25

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